

European Monitoring Centre on Racism and Xenophobia
Observatoire Européen des Phénomènes Racistes et Xénophobes
Europäische Stelle zur Beobachtung von Rassismus und Fremdenfeindlichkeit



Racism and Xenophobia in the EU Member States **trends, developments and good practice**

Annual Report 2005 – Part 2



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EUMC – Annual Report 2005
Part 2

Foreword

Foreword by Anastasia Crickley, Chairperson of the Management Board, and Beate Winkler, Director of the EUMC

This Annual Report 2005 of the EUMC is the first Annual Report to appear since the enlargement of the EU in 2004. It therefore constitutes the first comprehensive overview of racist, xenophobic, antisemitic and anti-Muslim discrimination, and responses to it, to cover all 25 EU Member States. The report covers events during 2004, which was also the first full year that Council Directive 2000/43/EC (the Racial Equality Directive) had been in force. One of the tasks of this year's report has therefore been to describe the practical consequences of this, in terms of the legal and institutional mechanisms introduced by Member States in response to it.

A recurring theme of this Annual Report is that of 'mixed messages' in a number of areas, including with regard to responses to the Directive. By the end of 2004, whilst most Member States had transposed the Racial Equality Directive, four Member States had been referred to the European Court of Justice over their failure to satisfy the requirements of the Directive, and several Member States had still not established a specialised body to provide assistance to victims of discrimination and promote equal treatment.

Other mixed messages emerge from developments during 2004. Whilst most Member States have strengthened their anti-discrimination legislation in response to the Directive, and some have introduced stronger measures against extremist and racist crime, some have also introduced legislation which restricts certain rights and opportunities of migrants and minorities, covering issues such as access to citizenship or rights to wear clothing signifying religious faith. In addition, some Member States have been giving out messages in new legislation that new immigrants are not welcome, for political rather than economic reasons. This sits uneasily with the increasing need for labour in many sectors that cannot be met internally. Furthermore the accompanying anti-immigrant political discourse makes things harder for those fighting for diversity and against discrimination in Europe.

The incorporation of the 10 new Member States has helped to draw attention to the inclusion of issues of national minorities on the agenda of anti-racism and anti-discrimination. Substantially large Roma populations live in several of the new Member States of Central and Eastern Europe. Whereas current EU treaties make no mention of national minority protection or positive minority rights, minorities such as Roma, Sinti, Gypsies and Travellers are covered by anti-discrimination measures. This Annual Report records evidence of the discrimination suffered by these populations in all of the substantive areas covered by the report – in the spheres of employment, housing and education – as well showing them to be regular victims of racist violence. The EU's anti-discrimination Directives are therefore of potentially great importance for these minorities in order to help to

break the vicious circle of deprivation, prejudice and discrimination that they experience.

Two incidents that had repercussions on the manifestations of racist sentiments during 2004 were the Madrid train bombings in March and the murder of Theo van Gogh in Amsterdam in November. Evidence is quoted in this report of incidents of racist violence against people or property that followed directly on from these events, including in countries outside Spain and the Netherlands. The chapter on racist violence and crimes sets out what data is available on the problem of racist violence in the EU. Again, with regard to statistics in this area, the overall message is mixed. Whilst there are adequate statistics to enable an overview to be given of trends in racist violence and crime in seven Member States, in many other countries there is shown to be a complete absence of usable data in this area. Only when more Member States start to take the recording of racist incidents more seriously will it be possible to gauge the true extent of the problem, and target adequate measures against it.

It is clear that the European Union must prioritise the fight against racism and xenophobia in order to give strength to a positive public discourse on diversity and equality. The EUMC will continue to do its utmost to support the European Union and its Member States in their efforts to eradicate racism, xenophobia, Islamophobia and antisemitism from European society.

Finally, we would like to take the opportunity to thank the Management Board and the EUMC staff for their strong commitment and important work over the last 12 months. We are looking forward to further positive developments and achievements during the coming year.

Anastasia Crickley
Chairperson of the Management Board

Beate Winkler
Director of the EUMC

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Executive Summary

Introduction

The Annual Report 2005 covers information and developments for the year 2004 concerning the occurrence of, and responses to, racism, xenophobia, antisemitism and anti-Muslim manifestations in the 25 EU Member States. As with last year's report, the five thematic areas of legislation, employment, housing, education, and racist violence and crimes are covered. However, unlike previous reports, this year's report does not select one of these areas for a more detailed focus. Instead, each area is covered equally. Nevertheless, there are some themes which inevitably stand out more than others for this year, namely the implications of the enlargement of the EU by ten new Member States in 2004, and a continuing focus on changes subsequent to the introduction of the anti-discrimination Directives.

The addition of the ten new Member States to the EU on 1 May 2004 has resulted in a major change in data collection for this year's report, with ten new sets of information to be collected in each of the above areas. While not all ten of the new Member States were in a position to provide data on each of the five main topic areas, a great deal of new data from the new Member States has been included.

Legislation

In last year's EUMC Annual Report the legislation chapter focused primarily on the transposition of the two new Equality Directives – Council Directive 2000/43/EC (the 'Race' Directive) and Council Directive 2000/78/EC (the Employment Directive). This year's chapter examines the state-of-play of the transposition of the Directives after the first full year of operation, and also observes the forms of practical implementation.

The RAXEN National Focal Point (NFP) reports indicate that most of the 25 Member States have transposed the Directives in their entirety. Four Member States – Germany, Luxembourg, Austria and Finland – were referred to the European Court of Justice (ECJ) for their failure to satisfy the requirements of the Racial Equality Directive, and later in the year the same four were referred to the ECJ for their failures regarding the Employment Equality Directive. Several Member States failed to establish a specialised body with responsibility for promoting equal treatment and providing assistance to victims of discrimination. In nearly half of the Member States an existing body has undertaken the relevant responsibilities. Others have established a completely new body, most of these having a multi-stranded remit to deal with all the grounds of discrimination set out in the Directives. This issue has engendered arguments as to the relative advantages and disadvantages of combined-issue equality bodies as opposed to those specialised on one issue.

Another issue is the scope of the legislation that has been introduced, with arguments in several countries that particular areas of coverage have been omitted, as well as questions as to whether the changes regarding the shift in the burden of proof are adequate, and whether the available sanctions are truly ‘dissuasive’. While there are differences between Member States in terms of how they have transposed the Directives, these differences do not relate to the division between the EU15¹ or the ‘new’ Member States.

Although Member States have introduced legislation affording improved protection to racial/ethnic minorities and populations of migrant origin under the terms of the EU Directives, some have also chosen to introduce other legislative measures which serve to restrict various rights and opportunities of migrants and minorities, variously covering issues such rights to entry and citizenship, or rights to wear clothing signifying religious faith. In some Member States there have been moves to re-define national minorities, advantaging some minority groups over others. If adopted, such measures would in more than one case undermine the rights of the Roma population.

At the same time, there is encouraging evidence that some Member States are introducing legislation that focuses on racist offenders. Some Member States have introduced legislation and other activities to combat and punish illegal Internet use by extreme right-wing groups. There have also been various moves among Member States to make it easier to prosecute racist crimes, and to increase sanctions against them.

Employment

There are mixed messages emerging from, on the one hand, policies to combat discrimination in the labour market, and, on the other hand, policies in certain Member States that restrict the rights of third country nationals, and, for example, limit family unification and marriage for non-nationals. There appears to be a conflict between the need for immigrant labour, working without discrimination, and the desire by Member States to be seen to be doing something to limit and control immigration. Whilst awareness of the illegality of racial discrimination appears to be slowly increasing, large numbers of workers hold a legal status, such as restricted work permit, which renders them more vulnerable to exploitation and discrimination, and, particularly in the case of undocumented workers, creates exclusion. In turn, exclusion can foster racist attitudes in the majority population.

The national reports from most Member States broadly concur on the emergence of labour markets that are segmented according to ethnic or national origin. Migrant or minority ethnic workers are disproportionately grouped in the lowest occupational categories within the least prestigious employment sectors. While each Member State has its own patterns, certain groups are over-represented as

¹ ‘EU15’ is used as the shorthand term for the ‘old’ 15 EU Member States, before the 2004 enlargement to the ‘EU25’. Correspondingly, ‘EU10’ refers to the 10 new Member States.

victims of discriminatory treatment in employment. Typically, migrant workers from Africa, the Middle East, Asia, and Central or Southern America experience high levels of discrimination. There is also evidence pointing to discrimination against recent migrants from eastern European countries such as Russia and the Ukraine. In some of the new Member States, the Roma are particularly vulnerable to discrimination in employment, and experience extremely high levels of unemployment.

There is also evidence that the greater labour market difficulties experienced by non-EU citizens are similar to those of national citizens who were born overseas or whose parents were born overseas and who are visibly distinct. For example, while Iraqi citizens in Finland had an unemployment rate of 72 per cent, the unemployment rate of Iraqi-born Finnish citizens was still 64 per cent, compared to nine per cent for Finns.

Evidence of inequality in employment is often explained solely with reference to people's 'human capital' – for example, their level of education. This one-sided explanation has come under increasing critical scrutiny through research, including 'discrimination testing' experiments, and in 2004 there were a number of these reported in various Member States, taking a variety of forms. In comparison with previous years, in 2004 NFPs presented many more examples of different forms of discrimination testing. For example, researchers from the University of Paris submitted *curricula vitae* in response to 258 job advertisements, and found that job applicants with a disability, followed by those of African and North African backgrounds, were the main victims of discriminatory treatment. Other tests were carried out in Denmark, Germany, Hungary, Netherlands, Sweden, and the UK. Notably, most of these were carried out not by researchers but by TV or newspaper journalists, highlighting employers' discriminatory responses to applicants from minority ethnic backgrounds. In Denmark, journalists also found that both public and private sector employment agencies were willing to accept employers' instructions not to send immigrant applicants for jobs.

There were also specific cases of discrimination at work, concerning unjustifiable treatment, racist bullying, and dismissal, which came to light during 2004 through court and tribunal cases. Although direct discrimination in recruitment is usually disguised and invisible in its operation to the victim, it was noticeable that several blatant examples concerned incidents of refusal specifically to recruit Roma.

On the other side, the NFPs have reported encouraging evidence of a variety of initiatives to prevent discrimination in employment. Many of these are linked to European funding and/or are related to national programmes which set out to implement European Directives. In a number of Member States, governments, employers' associations and individual companies have developed charters, codes, or incentives for good practice against racism and discrimination. Also reported were several specific projects that target employment access for the Roma, including initiatives funded under the European PHARE and EQUAL programmes.

Housing

For the EU25, available information indicates that in the housing sector, minority groups, migrants, refugees and asylum seekers are regularly affected by discrimination and racism. There is also ample evidence to indicate that the Roma are the most vulnerable group to be confronted with discrimination and racism in the housing sector.

According to both official and unofficial information sources, direct examples of discrimination manifest themselves in a number of ways. Explicitly restricting access to housing on the basis of ethnicity or nationality was reported by a number of NFPs. Examples include discriminatory housing advertisements, discrimination in the administration of accommodation waiting lists, and outright refusal by landlords, real estate agents and housing associations.

In common with the employment sector, one regular method of identifying this kind of direct discrimination in the housing sector has been by experiments of discrimination testing. In Denmark the testing of housing associations by a newspaper showed that in all cases an applicant with a Danish name was informed of a shorter waiting period, and in Spain a similar exercise showed that migrants were less likely to be offered flats than native Spanish by real estate agencies.

Partly as a result of these processes of exclusion, migrants and minorities often suffer inappropriate housing conditions. A number of NFPs present statistics showing that it is more usual for foreigners than the majority population to live in small and overcrowded flats and under unhygienic and poor infrastructural conditions. Some Member States' NFPs – such as Greece, Ireland and Cyprus – specifically report about overcrowded or sub-standard accommodation for asylum seekers and refugees in reception centres and elsewhere.

There is also evidence from a number of Member States that foreign nationals are asked to pay higher rents than nationals. The NFPs provide information about unacceptable terms of contract or even the absence of any contract for foreign nationals in a number of Member States. They may also be subject excessive demands for advance payment, refusal to accept guarantors, and requests for excessive and unnecessary documentation. This situation is exacerbated by the fact that foreigners are not eligible for social housing in some Member States and, therefore, are forced to find accommodation in the private rental sector where rents can be pushed up. At the other end of the housing sector, information from Member States such as Germany and the UK indicates that home ownership is less widespread among minority ethnic and foreign populations.

Segregation in the housing sector is prevalent throughout the EU. Examples of segregation are offered for Spain, Cyprus, Portugal, and Sweden. It seems that territorial segregation is particularly acute for the Roma population in the Czech Republic, Spain and Hungary.

In comparison with the above, examples of *indirect* discrimination in housing appear far less frequently, but it can be noted with respect to access to housing which is made dependent on nationality, duration of residence, and the financial status and economic situation of the applicant.

Reported initiatives of 'good practice' in housing were provided by national and local governments and NGOs. Some programmes construct housing or buy and restore empty flats and have specific initiatives to make them available to previously excluded minorities. Some municipalities in Austria have special policies to over-ride the more 'normal' exclusion of third country nationals from council housing, and make sections of them available to foreigners. In housing projects in several countries there are agreements and contracts for the tenants on working for diversity and against racism, and there are codes of practice for municipalities to combat discrimination in access to housing.

Education

Where data is available, it is evident that the educational achievements of a number of migrant and minority groups lag behind those of majority populations in Member States. Some evidence also points to the fact that minorities are subject to discriminatory treatment.

In particular, it is the migrants from non-EU countries, as well as some national minority groups, who suffer from high rates of educational under-achievement. The disadvantaged position in education of pupils with a migrant background can also be seen in the results of the OECD PISA study which was published in December 2004. In general, this even holds true for those students whose parents are foreign born but who themselves have grown up in the reception country and have spent their entire school career there.

The most vulnerable groups experiencing racism and discrimination in education are the Roma and Travellers. However, other non-migrant minority groups can also be identified in individual Member States as being vulnerable to disadvantage and underachievement in education, such as the Muslim minority in Greece.

In reports on educational inequality, two of the main concerns are those of segregation, and the over-representation of certain groups in 'special education'. Whilst several member states report these as issues for various migrant/minority groups, by far the largest number of references to these problems specifically concern the Roma. Disproportionately high concentrations of Roma pupils in certain classes, and an over-readiness to label Roma children as educationally disabled and with learning difficulties, were reported in several Member States.

The issue of religious symbols in schools, in particular the wearing of headscarves, became rather controversial in some Member States (although not in others) during 2004. The French law banning the wearing of conspicuous religious symbols in schools came into effect in 2004. There were individual cases of disputes on this

issue reported in a school in Belgium, in a French school in Madrid, and in a Catalan school. In the Netherlands and Sweden, it was reported that schools have been told that they are in theory allowed to prohibit certain items of clothing, but only if it can be shown that they pose specific problems. In Austria an attempt by one school principal to prohibit a girl from attending the school wearing a headscarf failed after school authorities made it clear that such a ban was a violation of the principle of religious freedom. In the UK there is a general tradition of tolerance towards the wearing of religious symbols, although there was one on-going dispute going through the courts during 2004 over a pupil's desire to wear an ankle-length garment in keeping with her religious beliefs.

The national reports describe a range of initiatives in education. Some Member States are introducing a new inter-cultural education syllabus, and new parts of the curriculum designed to address racism and antisemitism. There are many reported initiatives to address discrimination against Roma children, such as the project to integrate Roma children into mainstream education in Slovenia, which is already producing positive results, and a new law in the Czech Republic which is addressing the problem of the extreme segregation of Roma children in education. In Slovakia, two principal ways of eliminating the segregation of Roma children are being attempted. One uses motivational means, awarding grants to projects aimed at instructing teachers in the education of Roma children, and the other using coercive means, such as taking legal actions against school directors who are formally responsible for transferring children into special schools.

The NFP reports suggest that EU-sponsored projects in the area of minority education are likely to have a positive impact in the 'new' Member States by stimulating debates and opening doors for more open dialogue on minorities. Prior to the accession of these Member States to the EU, several of these projects had already been conducted, many through the EU PHARE Programme.

Racist violence and crime

A number of incidents took place in 2004 that had repercussions on inter-community relations and the manifestation of racist sentiments and crimes at the level of individual Member States and beyond, most notably, the Madrid train bombings (March 2004) and the murder of Theo van Gogh in the Netherlands (November 2004).

Among the EU15 there is no publicly available official data on incidents of racist violence and crime for Greece, Spain, Italy and Portugal. In comparison, the UK² has the most comprehensive publicly available official data on racist violence and crime among the EU15, which is able to record a wide range of racist incidents. Germany and Austria focus their data collection more narrowly on the outlawed activities of extremist (right-wing) groups, while Belgium, Luxembourg and the

² Where reference is made to official 'UK' data this refers to criminal justice data for England and Wales.

Netherlands collect official data on a range of discriminatory racist incidents that can include racist violence and crime. Among the new Member States, according to information supplied by the RAXEN NFPs, the Czech Republic, Hungary, Poland and Slovakia collect official data on racist violence and crime (and associated activities) that exceed the limited references to court cases provided in other countries.

Member States with effective data collection mechanisms and broad-based legal definitions of 'racist incidents', such as the UK, encourage reporting and recording of incidents. As a result, the UK, with 52,694 racist incidents reported to the police in the period 2003-2004, has the highest number of reported racist incidents among the EU25. Germany has the next highest number of officially registered crimes among the EU25, with 6,474 crimes registered as "politically motivated criminality – right wing" in the first ten months of 2004. In comparison, France, which has a large ethnic minority population, officially recorded only 1,565 racist, xenophobic and antisemitic threats and acts in 2004. Among the ten new Member States, official records of various racist, xenophobic and religious crimes range from 25 in Hungary (2004) through to 209 in the Czech Republic (Jan-Nov 2004).). In general, the enormous difference across the 25 EU Member States in numbers of recorded incidents of racist violence and crime tells us as much about the inadequacy and inconsistency of data collection as it does about the actual extent of racist violence and crimes in the EU.

According to both official and unofficial reports on racist violence and crime, the most vulnerable victim groups in the EU are ethnic minorities within the national population, undocumented immigrants, Jews, Muslims, North Africans, people from the former USSR and the former Yugoslavia, refugees/asylum seekers, and Roma/Sinti/Gypsies/Travellers. The particular histories and population characteristics of the new Member States mean that the Roma and people from the former USSR are often the targets of racist sentiments and acts. Available evidence from the EU15 indicates that it is both members of extremist politically-motivated organisations, and young males and others not affiliated to such groups, who are the perpetrators of racist violence and associated crimes.

An additional issue is that one third of the 25 Member States include some reference to violent and aggressive acts against ethnic minority and foreign groups by public officials – namely the police and immigration officers. Against these disturbing reports, the NFPs refer to a range of positive police initiatives that set out to combat racism within the police, build community relations, and/or assist victims of racist violence and crime. Amongst the ten new Member States a number of 'good' practice initiatives specifically set out to tackle the problem of police relations with the Roma community.

1. Introduction

The Annual Report 2005 covers information and developments for the year 2004 concerning the occurrence of, and responses to, racism, xenophobia, antisemitism and anti-Muslim manifestations in the 25 EU Member States. As with last year's report, the five thematic areas of legislation, employment, housing, education, and racist violence and crimes are covered. However, unlike previous reports, this year's report does not select one of these areas for a particular focus. Instead, each area is covered equally. Nevertheless, there are some themes which inevitably stand out more than others for this year, namely the implications of the enlargement of the EU by ten new Member States in 2004, and a continuing focus on consequences of the anti-discrimination Directives.

The findings in this Annual Report are the product of an on-going data collection exercise involving the EUMC's 25 RAXEN National Focal Points (NFPs). Each Member State has one NFP, which is responsible for collecting data under common headings in each of the five thematic areas. NFPs consist of consortia which are typically constituted by bodies such as anti-racist NGOs, university research centres, institutes for human rights, or government-affiliated organisations. The process of creating the Annual Report begins with the approval by the EUMC's Management Board of the content, structure and timetable. The NFPs are then requested to collect information from a range of sources, and in cooperation with various national organisations and actors, in accordance with specific and common guidelines. Each NFP produces a 'National Report',³ and from the information in these National Reports the thematic chapters are produced, some in-house and some by external contractors. At the same time the accuracy of the information is checked by government liaison officers from each Member State. The first full draft is produced by the EUMC for comment by the members of the Management Board around June each year, and the final draft is produced for approval by the Management Board in October of the year of publication.

A major change in data collection for this year's report has resulted from the addition of the ten new Member States to the EU on 1 May 2004 – with ten new sets of information to be collected in each of the above areas. While not all ten of the new Member States were in a position to provide comprehensive data on each of the five main topic areas, a great deal of new data from the new Member States has been included.

Given that the EUMC now collects data from 25 Member States, this year's Annual Report has replaced the previous country-by-country approach with overviews of each of the five research areas organised with respect to various themes. Selected examples of 'good practice' initiatives, from both the EU15 and the new Member States, are inserted throughout the report.

³ The 25 National Reports are to be published in full on the EUMC website by the end of 2005.

Chapter 2 of the Annual Report covers the area of legislative and legal initiatives. The year 2004 was the first full year that Council Directive 2000/43/EC (the ‘race’ Directive) had been in force. The chapter first looks at the practical impact of the two anti-discrimination Directives, and pays particular attention as to whether Member States have designated special bodies for the promotion of equal treatment. However, not all legal developments in 2004 related to the Directives. There were also many other developments unrelated to transposition, and one theme of the chapter is the mixed messages that come from, on the one hand, legislation that sets out to improve the rights of minorities and combat race hate crimes and, on the other hand, legislation that introduces limits on rights and conditions of residence, or the right to wear religious clothing such as the headscarf and the hijab.

Chapter 3 addresses the area of employment. Against a backdrop of information about persistent racism and discrimination in the employment sector, the chapter focuses on a number of themes, including discrimination specifically against the Roma in the context of the enlargement of the EU. It describes how evidence for employment discrimination is acquired, and presents examples of the forms that discrimination takes, and the positive ways in which governments, social partners and NGOs are attempting to combat it.

Chapter 4 looks at the housing sector, and explores the various forms that both direct and indirect discrimination can take, which contribute to the fact that migrants and minorities more regularly end up in structurally inferior, overcrowded and unhygienic living conditions. The chapter presents examples of direct discrimination, which can take the form of the straightforward refusal to let housing to ethnic minorities and migrants, as well as the imposition of higher rents and shorter contracts. Examples of indirect discrimination can include barriers such as the requirement of a minimum period of residence to be eligible for public housing. The chapter finishes with examples of positive initiatives against discrimination in the housing sector.

Chapter 5 covers the education sector. The chapter looks at the social groups which are most vulnerable to discrimination, and gives examples of inequalities related to segregation. Many of the examples offered refer to the unequal treatment of the Roma in Europe’s educational systems. The issue of religion and education is explored in some detail, with examples referring to debates and confrontations concerning religious symbols in schools, particularly the wearing of headscarves, as well as accompanying debates concerning the function and place of separate ‘faith schools’. It concludes with good practice examples against discrimination and segregation, and presents some positive examples of awareness-raising initiatives.

Chapter 6 presents an overview of the latest available data in the field of racist violence and crimes. Although in many countries there is an absence of satisfactory data, the chapter is able to present a picture of trends in racist violence and crime in seven Member States. Several themes are addressed, including an overview of significant incidents, the issue of violence by public officials, and the context of

EU enlargement. It concludes with a number of examples of good practice in the area of policing, in victim-centred initiatives, and in data collection.

Whilst examples of ‘good’ or promising practices can be found in each of the main subject areas in both the EU15 and the new Member States, it is apparent that some Member States are relatively active in initiatives against racism and discrimination, while others lag behind. The enlargement of the EU poses new challenges in the area of data collection, including with respect to groups such as the Roma that are particularly vulnerable to racism. Whilst there are gaps in data in certain areas, this year’s Annual Report provides the first comprehensive overview of racist, xenophobic, antisemitic and anti-Muslim discrimination, and responses to this, to cover the whole 25 EU Member States.

2. Legislative and institutional initiatives against racism and discrimination

The legislative sections of the 25 RAXEN national reports for 2004, on which this chapter is based, present an overview of legislative and institutional initiatives against racism and discrimination in the EU. Following on from last year's Annual Report, this chapter begins by examining the state-of-play on the transposition of the two anti-discrimination Directives (Directives 2000/43/EC and 2000/78/EC)⁴. Aside from the legislative changes that are necessary for transposition of the Directives, there are other legislative developments that can be characterised as having either a positive or negative impact on ethnic minorities and migrants. The chapter highlights a number of legislative and institutional initiatives that set out to enhance the protection of ethnic minorities and migrants, alongside other initiatives that appear to erect barriers between minorities and the respective majority population. Finally, the chapter examines a range of new awareness training initiatives that target the issue of unequal treatment of minorities and migrants, which might act as 'good practice' models for criminal justice agencies and administrative bodies.

2.1. The transposition of Directives 2000/43/EC and 2000/78/EC

All Member States were obliged to complete transposition of the two Directives on equal treatment by 19 July 2003 (in the case of Directive 2000/43/EC) and by 2 December 2003 for most of the provisions in Directive 2000/78/EC, with an extended period in relation to its provisions on disability and age. New Member States were obliged to transpose the Directives by 1 May 2004. In its 2004 equality and non-discrimination report⁵ the Commission notes that a number of Member States did not manage to meet the deadlines for full implementation of the two Directives. Eventually, a total of four Member States - Germany, Luxembourg, Austria and Finland – were referred to the European Court of Justice (ECJ) for their failure to satisfy the requirements of the Racial Equality Directive, and in

⁴ It is not intended, however, to give a qualitative assessment of the implementation of laws in the Member States. This is the role of the European Commission which, as this report is going to press, is in the process of starting legal proceedings against some Member States for failing to accurately reflect all the provisions of the Directives in their national law.

⁵ European Commission (2004). *Second Annual Report on Equality and Non-Discrimination in the EU*, July 2004

December 2004 the same four were referred to the ECJ for their failures regarding the Employment Equality Directive.⁶

The 10 new Member States had a later transposition deadline than the 15 ‘old’ Member States. By the end of 2004 all of the new Member States except the Czech Republic had officially notified the European Commission that they had transposed the two Directives. However, initial examination suggested that there were some significant gaps in transposition in some countries.⁷

From the beginning of 2005 preparatory work began at the Commission for formal stages of infringement procedures for non-conformity with the Directives. The indications at the beginning of 2005 were that action for non compliance with the Racial Equality Directive was likely to be launched in 2005 against many of the ‘old’ Member States, to be followed by infringement action in respect of the Employment Equality Directives against some of the ‘old’ Member States and for both the Directives against the new Member States.⁸

2.1.1. Special bodies for the promotion of equal treatment

Article 13 of Directive 2000/43/EC states that Member States must designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin”. Such bodies (in this chapter referred to as the ‘special body’) shall have competences to include:

- Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- Conducting independent surveys concerning discrimination; and
- Publishing independent reports and making recommendations on any issue relating to such discrimination.

In nearly half of the Member States an existing body had been adapted to undertake the responsibilities set out in *Article 13*. For example, in **Belgium**, the **Netherlands** and **Sweden** their long-standing equality agencies or Ombudsman have been given the task. In **Austria** the Equal Treatment Act 2004 extended the mandate of two existing equality bodies so that they would cover race, although, at the date of the report to the EUMC, its additional members had not yet been appointed.⁹ In **Ireland** the special bodies are the Equality Authority, established in 1999, and the

⁶ Infringement proceedings are twofold. First is the procedure for ‘non-communication’, where the Commission takes legal action against Member States for failure to adopt any legislation, or for adopting laws which fail to cover their entire territory. In a second stage, the Commission takes legal action where the Directives have not been transposed correctly (for example, not all grounds of discrimination have been covered, incomplete definitions of indirect discrimination etc.).

⁷ Equality and non-discrimination Annual Report 2005, European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, Brussels 2005, p. 12.

⁸ Equality and non-discrimination Annual Report 2005, European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, Brussels 2005, p. 12.

⁹ NFP Austria *National Report Austria* 2004, p.11

Equality Tribunal. In **Slovakia**, the existing Slovak National Centre for Human Rights was nominated as the special body, and in **Lithuania** the jurisdiction of the Equal Opportunities Ombudsman has been extended to include 'race'/ethnicity.¹⁰ In **Latvia** the Latvian National Human Rights Office has been named as the responsible body. In some cases the mandate has been extended without the introduction of any changes to their structures. In **Luxembourg** the body under discussion (the Work and Mines Inspectorate) was described as already "overwhelmed" by its current workload without additional responsibilities.¹¹

In ten Member States a completely new body has been established. Where new bodies have or are to be established (for example, in the **Czech Republic, Estonia, Greece, France, Hungary and Slovakia**) they are in some cases multi-stranded, so that they deal with all of the grounds of discrimination set out in Directives 2000/43/EC and 2000/78/EC. In other cases (e.g. **Denmark, Italy, Cyprus and Finland**) a new body has been established whose remit appears to be solely to deal with racial or ethnic discrimination. Whether it is more effective to have a body with responsibility solely for racial/ethnic equality matters has been at issue in the **UK**, where the Commission for Racial Equality in 2004 was opposing government plans for a single equality and human rights body, arguing that it could not provide the same level of service that can be provided by a body with responsibility solely towards the elimination of racial discrimination, and that it may not have the capacity to reduce conflict within communities.¹² At the end of 2004 the government confirmed that it had opted for a single body, the Commission for Equality and Human Rights.

In some Member States an Ombudsman office undertakes the function of the special body. In **Austria** two new Ombudspersons for equal treatment have been created, one responsible for discrimination on the grounds of race, ethnic origin, religion, age and sexual orientation in relation to employment, and one covering racial and ethnic discrimination in relation to the non-employment related scope of the Racial Equality Directive.¹³

In **Portugal** the High Commissariat for Immigration and Ethnic Minorities, formed in 1995, has been designated as the special body. However, certain NGOs have expressed doubts about its total independence, since it is an interdepartmental structure reporting directly to the Presidency of the Cabinet.¹⁴ The lack of institutionally guaranteed independence leads to fears that tasks will not be executed independently. According to the National Reports, by the end of 2004 no special body for the purposes of Directive 2000/43 had been established in **Germany, Spain, Malta, Poland and Slovenia**.

¹⁰ ISR, *National Report Lithuania*, 2004, p.41.

¹¹ CEPS-INSTEAD, *National Report Luxembourg*, 2004

¹² CRE, *National Report UK*, 2004, p.37. The government response to the consultation on Equality Institutions Review is available at: <http://www.womenandequalityunit.gov.uk/equality/project/index.htm>.

¹³ NFP Austria *National Report Austria*, 2004, p.11

¹⁴ Númena-Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.27

2.2. Additional legislation: positive and negative developments

By the end of 2004 every Member State had introduced new laws affecting the rights of individuals belonging to racial and ethnic minorities. Even excluding those legislative acts that were intended to transpose the Directives, the reports record more than 40 new legislative measures. In many Member States two or more new legislative acts were promulgated in 2004. While some of the measures offer positive benefits for migrants and individuals belonging to ethnic minorities, the main emphasis of the new legislation is restrictive, particularly with respect to new and prospective migrants. This new body of law may limit rights of entry, tighten access to citizenship, impose citizenship tests, create new grounds for expulsion, tighten up on the rights of children, and introduce bans which are considered detrimental by some with respect to certain religious and ethnic minority groups.

Below are some examples of legislative developments that variously, both positively and negatively, impact on migrants and individuals belonging to ethnic minorities.

2.2.1. Legislation directed at hate crimes, including Internet crimes

A positive response by a number of Member States has been to legislate against hate crime. In **Finland** the Penal Code has been amended to include crimes for racist or equivalent moves and is described as “a step in the right direction”.¹⁵ In **France** the Law for the Adaptation of Justice to the Evolutions of Criminality¹⁶ extends the time for prosecuting racists and increases sanctions, providing for a maximum prison sentence of three years. In **Germany** new legislation on Rights of Victims in Criminal Proceedings 2004 can be used in cases of race crimes.¹⁷ In the **Netherlands** a law came into effect in February 2004¹⁸ which has increased prison sentences for those guilty of the “deliberate abuse” of people on account of ‘race’, religion and other specified grounds, and the systematic incitement to acts of discrimination.¹⁹ In **Ireland** the Prohibition of Incitement to Hatred Act 1989 is currently being reviewed. In **Hungary** an amendment to the Criminal Code in late 2003 dealt with anti-hate speech legislation. However this was challenged as a

¹⁵ Finnish League for Human Rights, National Report Finland, 2004, p.30

¹⁶ Loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité (JORF no 59 du 10 mars 2004 p.4567) (PUBFR1796)

¹⁷ EFMS, *National Report Germany*, 2004, p.28. The law is printed in the *Bundesgesetzblatt*, Year 2004, Part I, No. 31, pp. 1354-1358; see also: press release of the Bundesjustizministerium (14.05.2004)

¹⁸ Bulletin of Acts and Decrees 2003, 480

¹⁹ Bulletin of Acts and Decrees 2003, 480.

limitation on freedom of speech and in 2004 the Constitutional Court declared the law struck down.²⁰

The Internet is increasingly a medium whereby racist organisations transmit information and organise. Member States, old and new, have responded to this development through the introduction of legislation aimed at the prevention of hate crimes transmitted via the Internet. In **France** the government has established a “surveillance system for audio-visual broadcasts that may contain racist or antisemitic opinions”.²¹ Additionally an Inter ministerial Committee for the Fight Against Racism and Anti-Semitism has been looking at the diffusion of racist and antisemitic ideas spread over the Internet.²² In the **Netherlands** the maximum sentence has been increased from one to two years in cases of the systematic and deliberate abuse of people on account of ‘race’, religion, personal conviction or sexual orientation.²³ A District Court issued a suspended sentence in December 2004 to an individual who had set up a website denying the Holocaust.²⁴ In **Finland**, following concern about the spread of racist material on the Internet, the Renewed Act on the Exercise of Freedom of Expression in Mass Media provides the authorities with more efficient means to combat racist propaganda on the Internet.²⁵ In **Lithuania** a legal case has been taken against a website accused of inciting ethnic hatred.²⁶ In **Slovenia** an investigation has begun on hate speech on the Internet and whether this is in violation of the Penal Code. Proceedings are being taken against two individuals identified by their IP numbers on their computers.²⁷

The RAXEN reports suggest that in some Member States the issue of whether anti-hate legislation limits rights to freedom of expression and is therefore unconstitutional has emerged. In **Hungary**, as stated earlier, a law on race hate crimes was successfully challenged as a limitation on the freedom of speech.²⁸ In **Denmark**, in a case involving the sending of racist hate emails to members of parliament, the court took into consideration the right to freedom of speech²⁹ but nevertheless found that part of the material was in violation of Danish Criminal Code Section 266b.

²⁰ Decision 18/2004.

²¹ ADRI, *National Report France*, 2004, p.21

²² ADRI, *National Report France*, 2004, p.21.

²³ Bulletin of Acts and Decrees 2003, 480.

²⁴ Rb Den Bosch 21 December 2004, LJN: AR7891 (www.rechtspraak.nl).

²⁵ Finland, 460/2003 Act on the Exercise of Freedom of Expression in Mass Media (1.1.2004). English translation of the Act on the Exercise of Freedom of Expression in Mass Media is available at: <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf> (14.1.2005).

²⁶ Department of Ethnic Studies, *National Report Lithuania*, 2004, p. 44.

²⁷ Peace Institute - Institute for Contemporary Social and Political Studies *National Report Slovenia*, 2004, p.54.

²⁸ CMRS *National Report Hungary*, 2004, p.21

²⁹ DACORD, *National Report Denmark* 2004, p.28

2.2.2. Legislation that improves the rights of migrants and members of ethnic and national minorities

Some Member States have promulgated new laws that improve the rights of migrants and ethnic minorities. In **Portugal** the New Law³⁰ establishes a plan to ensure equality of rights and duties for foreign citizens. This includes enforcing systems of support for immigrants, creating friendly interfaces, supporting networks of immigrants, mechanisms for the recognition of qualifications and measures to sensitise public opinion and the media towards favouring the presence of immigrants and ethnic minorities.³¹ Decree No 32/2004 regulating relationships between Portugal and Angola guarantees their citizens equal treatment in relation to social security rights. As a result Angolan citizens working in Portugal will be eligible for social security benefits.³² In **Greece** there have been a number of legislative advances aimed at extending rights to immigrants. Some automatic extension rights have been introduced for those whose work permits had expired and who had failed to renew them in time. On family reunion rights the law allows the entry of the parents of those with rights of permanent residence and of their children up to the age of 21. The **Hungarian** Parliament has ratified a bilateral treaty on the protection of the rights of the Hungarian minority living in Serbia and Montenegro and those of the Serbian minority living in Hungary.³³

2.2.3. Defining a national or ethnic minority

There is evidence that in some Member States the response to demands for equality of treatment has been to re-define who is a national minority, advantaging some long-standing minority groups over others. The Roma, Sinti, Gypsies and Travellers constitute one such affected group. In the **Netherlands** in November 2004 the Upper House of Parliament adopted the bill to ratify the Framework Convention for the Protection of National Minorities. However, there was a proposal before the Parliament³⁴ to designate only Frisians as a national minority. Thus the Roma and Sinti, despite their presence in the Netherlands over generations, would never be able to meet the test of presence (antiquity on Dutch soil) upon which the new law would be based, and would never acquire the right to recognition as a national minority.³⁵ In **Poland** the Act on National and Ethnic Minorities and Regional Language³⁶ defines national minorities as a minority residing in the Republic of Poland for at least 100 years³⁷ thus excluding ethnic minorities who have arrived more recently.³⁸ In **Slovenia** a Bill was proposed by members of the Slovenian National Party to “enable easier integration in all

³⁰ 107-A/2003, of 31st December.

³¹ Númena-Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.28

³² Diário da República No. 255, Série I-A; www.dre.pt.

³³ CMRS, *National Report Hungary*, 2004, p.54

³⁴ Parliamentary Documents 11, 2003/04, 26 389, No. 8

³⁵ DUMC, *National Report Netherlands*, 2004, p.30

³⁶ <http://ks.sejm.gov.pl/proc4/ustawy/223>

³⁷ HFHR, *National Report Poland*, 2004, p.27

³⁸ Other countries have previously done something similar – e.g. Hungary in 1993

spheres of life”, which, if implemented, would have removed the special rights and special status guaranteed to the Roma under the Constitution. Although the Bill was not adopted, the Human Rights Ombudsman expressed concerns that the debate itself may trigger intolerant attitudes and conflicts.³⁹

2.2.4. Limits on entry and residence, and new powers of expulsion

This section provides an overview of initiatives adopted by Member States, (without implying that there is any question over their legality). Legal initiatives can influence the general climate of opinion and debate in a country, especially with regard to the phenomena of racism and xenophobia. Some Member States have limited rights of entry, particularly, although not exclusively, in relation to refugees. Thus in **Austria** an amendment to the Asylum Act 1997⁴⁰ restricts the period during which a preliminary assessment of the refugee’s case is made and “may curtail the asylum seeker’s right to prepare a defence”.⁴¹ In the **Czech Republic** the New Law on Employment 435/2004 requires the payment of a fee from those seeking work permits, a measure which will restrict entry.⁴² In **Denmark**, an amendment to the Alien’s Act introduces a rule of assumption that marriages of those who are closely related are entered into against the wishes of one or both parties.⁴³ In **Luxembourg** the new law on asylum⁴⁴ accelerates the procedure for “unfounded” claims of asylum and places limits on the right of appeal. In the **Czech Republic** there are more stringent requirements in relation to documentation for those requesting citizenship⁴⁵. In **Ireland** access to social welfare was restricted in 2004 under a new Social Welfare Code, which was seen as having a discriminatory effect on certain immigrants. Also in Ireland, a new Immigration Bill imposes obligations on carriers who do not check the validity of the documents of those whom they transport.⁴⁶ Similarly, new carrier sanctions have been introduced in **Finland**, despite NGOs representing migrants and ethnic minority interests raising concerns about them.⁴⁷

In addition to limiting or restricting entry, some Member States have also introduced new laws to increase their powers of expulsion. In Estonia the Law on Obligation to Leave and Prohibition on Entry makes the expulsion procedure of illegal aliens easier, although the law says that there cannot be expulsion to a

³⁹ Mlinarič, U. (2004) “Ponovni poskus diskriminacije”, in: *Večer*, 28.12.2004, p. 5

⁴⁰ BGBl 101/2003

⁴¹ Schumacher, S. (2004), *Ratgeber Fremdenrecht. Update 1. Mai 2004*, Wien: Manz Verlag, pp. 10-11

⁴² People in Need *National Report Czech Republic*, 2004, p.16

⁴³ DACORD, *National Report Denmark*, 2004, p.26

⁴⁴ No.5302 presented on 16.03.2004

⁴⁵ People in Need, *National Report Czech Republic*, 2004, p.16

⁴⁶ Social Welfare (Miscellaneous Provisions) Act 2004

⁴⁷ Finnish League for Human Rights, *National Report Finland*, 2004, p.30

country where there is a risk of torture.⁴⁸ In Italy the competence to decide on validating expulsions has been shifted from appointed to lay judges.⁴⁹

Under new legislation in **Denmark**, citizenship will be forfeited if a serious crime against public order has been committed.⁵⁰ In **Ireland** the Nationality and Citizenship Act 2004 lays down that a child born in Ireland to non-Irish parents is entitled to Irish citizenship only if one of the parents was lawfully resident in Ireland for three out of the four years preceding the child's birth. In addition, an Immigration Act 2004⁵¹ places a legal obligation on all citizens to inform on 'undocumented aliens if they are living as part of their household.

2.2.5. Increased police powers

In some Member States there are issues over the extent of the powers of the police and the potential for abuse of power, in relation to the treatment of ethnic and racial minorities. In two Member States new legislation has increased police powers. In **Austria** amendments to the Asylum Act 1997⁵² provide the police with new powers of arrest, as well as search and seizure, in relation to the treatment of refugees and asylum seekers. A number of provisions set out in the amended Act met with disagreement from NGOs based in Austria, as well as other institutions, such as the UNHCR and opposition parties. Austrian NGOs claim that the Act violates fundamental rights guaranteed under the Austrian Constitution.⁵³ The **Czech Republic** Law on Employment 435/2004 also extends the powers of the police in relation to checks on workers without documentation.⁵⁴

2.2.6. Bans on headscarves and on the hijab

Legislation prohibiting the wearing of headscarves or other identifiers of religious faith have been or are being introduced in a number of Member States, most notably in **France**, where the Law on the application of the principle of secularity in schools was adopted in March 2004.⁵⁵ This bans the wearing of signs or clothes ostensibly manifesting religious beliefs of any kind. In **Germany** legislation banning the wearing of headscarves by teachers has been introduced in Saarland, Baden Wurttemberg and Lower Saxony.⁵⁶ However, in Saarland and Lower Saxony

⁴⁸ Estonia/RT I 1998, 98/99, 1575, (12.11.1998).

⁴⁹ Italy / Decree Law no. 241/2004, (14.09.2004), available at: http://www.governo.it/GovernoInforma/Dossier/immigrazione/dl_241_140904.pdf (10.10.2004).

⁵⁰ The Act amending the Nationality Act, Act No. 311 of 5 May 2004 Government's Bill No. 138 [Forslag til lov om ændring af indfødsretsloven (Ændring af reglerne om erhvervelse af dansk indfødsret ved erklæring samt indførelse af ny bestemmelse om frakendelse af dansk indfødsret)]

⁵¹ Ireland, Immigration Act 2004

⁵² Austria, BGBl I 101/2003 (21.11.2003)

⁵³ NFP Austria, *National Report Austria*, 2004, p.14

⁵⁴ People in Need, *National Report Czech Republic*, 2004, p.15

⁵⁵ Law no. 2004-228 of 15 March 2004 (JORF no. 65 du 17 mars 2004 page 5190)

⁵⁶ At the time of writing it was reported that a similar law was being planned by the state parliament in Bavaria.

Christian and Jewish symbols are excluded from the bans. A draft law by the Hessian state parliament would ban headscarves in civil service employment. Again it would not apply to Christian and Jewish symbols due to the “Christian and Humanist influenced occidental tradition” of the State of Hesse. The Berlin Senate has agreed a Bill banning all religious symbols in schools (for teachers, not for pupils), the judiciary and within the police service.⁵⁷ In **Italy** a member of the governing coalition proposed draft legislation to outlaw the use of the hijab in schools.⁵⁸ In **Denmark** a proposal by the Danish Peoples Party for a parliamentary resolution forbidding public employees from wearing ‘cultural-related headgear’ was withdrawn after indications that it might constitute indirect discrimination.

2.3. Judicial and administrative decisions and their impact on immigrants and ethnic minorities

The reports to the EUMC document a number of legal cases related to racism and discrimination. Cases that were heard by the courts were most likely to involve antisemitism, Islamophobia or discrimination against the Roma. The cases raise a number of important issues including:

- How judicial processes operate to shape the rights of immigrants and ethnic minorities, and the impact of judicial decisions on family reunification, and on asylum
- Access to services and minority rights
- Racist activity and the influence of the far right

2.3.1. Procedures and legal cases

Some RAXEN reports make reference to the way that procedures themselves can restrict migrants and minorities rights. For example, in **Lithuania**, court processes take a long time, especially, it is reported, when cases involve Roma. As a consequence Roma who feel they are discriminated against prefer to find alternative methods of resolution, such as negotiating directly with the administration of the municipality.⁵⁹ Polls conducted in Lithuania also suggest a low awareness of mechanisms of complaint in cases of discrimination. In **Sweden** during 2004 the Labour Court delivered judgement in four cases regarding alleged employment discrimination on grounds of ethnicity. Complaints to the Ombudsman have increased during the past few years and there is continuing evidence of major problems in employer compliance. In **Cyprus** there are delays in dealing with cases and non-Cypriots are reported to be treated in a “more bureaucratic” manner.⁶⁰

⁵⁷ EFMS, *National Report Germany*, 2004, p.27

⁵⁸ “Chador fuori dall’aula”, in: *L’Espresso* (10.09.2004)

⁵⁹ ISR, *National Report Lithuania*, 2004, Lithuania (2004), p.44

⁶⁰ INEK-PEO *National Report Cyprus*, 2004, p.29

Legal cases reported over the last year cover a wide range of issues, including the refusal of residency to long-term residents (**Cyprus**)⁶¹ and the denial of a legal entitlement to Islamic religious instruction in state schools (**Germany**).⁶² Cases where discrimination based on religion or belief is at issue appear to be increasing. The **UK** report notes that between December 2001 and March 2003 there were 18 recorded cases of religiously aggravated offences.⁶³ In July 2004 the Home Secretary announced the government's intention to introduce legislation to outlaw incitement to religious hatred.⁶⁴

Other important areas of new case law relate to family reunification and asylum rights. There have been a number of important judicial decisions on family reunification. Some of these represent positive developments, confirming the rights of migrants, as for example, the decision of the **Austrian** Constitutional court which found quotas on family reunion unconstitutional.⁶⁵ However, in Cyprus and Denmark the law has also been interpreted restrictively, to limit family reunification. For example, a decision of the **Cyprus** courts confirms that even where children have been born in the country and have lived there for a considerable time, this should not be taken into consideration in decisions to deport.⁶⁶ In **Denmark**, where the imprisonment of a spouse implies a couple is no longer living together, this can result in deportation.⁶⁷ A report by the Council of Europe Commissioner for Human Rights on a visit to Denmark raised concern about family reunification cases and the administration of the Alien Act. Furthermore a new law⁶⁸ permits family reunification only if the child is under the age of 15, whereas previously it was 18.⁶⁹ Danish law⁷⁰ also limits family reunification in cases where the person has been sentenced for violence against a former spouse.

⁶¹ INEK-PEO *National Report Cyprus*, 2004, p.37

⁶² Nordrhein-Westfalen / OVG / 19 A 997/02.

⁶³ Crown Prosecution Service (2003) *Racist Incident Monitoring Scheme Annual Report 2002-2003*, London: Crown Prosecution Service.

⁶⁴ Home Office, (2004) *Sideline the extremists*, Home Office press release 07.09.2004, London, available at http://www.homeoffice.gov.uk/n_story.asp?item_id=993, (11.10.2004)

⁶⁵ Austria / VfGH/G119/03 ua, (08.10.2003)

⁶⁶ INEK-PEO, *National Report Cyprus*, 2004, p.35.

⁶⁷ ECHR / Abigail and Michael POULSEN v. Denmark, application no. 14469/03. Decision of 06.05.2004.Denmark (2004).

⁶⁸ Integration Act, Government's Bill No. L 171 of 20 February 2004 adopted by Parliament on 2 June 2004 and affirmed as Act No. 427 of 9 June 2004

⁶⁹ In exceptional cases a residence permit will be granted to children between 15-18 when refusal would be contrary to international conventions on the rights of the child.

⁷⁰ Integration Act, Government's Bill No. L 171 of 20 February 2004 adopted by Parliament on 2 June

2.3.2. Access to services and discrimination

The RAXEN reports highlight a number of judicial decisions concerning access to services or denial of services to racial and ethnic minorities. Cases include, for example, the refusal by a goldsmith to serve a Roma couple (**Finland**)⁷¹, the refusal to let an apartment on the grounds of the individual's ethnic origins (**France**)⁷² and the refusal of service to black people in a restaurant (**Luxembourg**).⁷³ In **Italy** the Administrative Tribunal has declared as discriminatory a health authority practice of making jobs available only to Italian citizens.⁷⁴

2.3.3. Racist activity and the influence of the far right

The RAXEN reports reflect a growing concern over racist activity, influenced by the far right. This activity appears to focus predominantly on three groups, namely Jews, Muslims and the collective group of 'Roma, Sinti, Gypsies and Travellers'. For example, NGOs in **Ireland** reported an apparent increase in racist incidents around the same time as the country's citizenship referendum.⁷⁵ In **Hungary** a Budapest Court banned the Blood and Honour Cultural Organisation, a well-known and active neo-Nazi organisation, on the basis of a petition by the National Security Service that the organisation was pursuing anti-constitutional aims.⁷⁶ In **Belgium** there was legal action concerning the issue of Holocaust denial, where three right-wing organisations had cases taken against them.⁷⁷ For the first time a Belgian Court used art.8 of the anti-discrimination law in relation to race hate crimes, in a case involving an attack and wounding of a Belgian national of Indian origin. In **France** the *Cour de cassation*⁷⁸ held for the first time that the use of racist insults provided grounds for the dismissal of a worker.⁷⁹ In **Germany**, for the first time, an extreme right-wing music group was convicted of forming a criminal association. In **Greece** there have been criminal proceedings related to antisemitic and racist texts.⁸⁰ The Estonian NFP also reports that the Estonian security police monitored the activities of a Russian ultra-nationalist group, Russian National Unity (RNE), and that Tallinn City Court, in 2002, charged members of this group with incitement to national and political hatred.⁸¹

⁷¹ Finland /Helsingin käräjäoikeus (24.11.2003), 03/11651.

⁷² TGI de Paris 17^e chambre correctionnelle 16 janvier 2004, Fatimata N'Diaye c/ Odette X (source : Le Parisien « La propriétaire condamnée pour discrimination » 17/01/2004).

⁷³ CEPS-INSTEAD, *National Report Luxembourg*, 2004, p.41.

⁷⁴ Ordinansa del Tribunale di Genova, 19 luglio 2004, available at: http://www.diario-prevenzione.net/diarioprevenzione/html_modules.php?name=News&file=article&sid=331

⁷⁵ NCCRI Press Release, Interim figures reveals upward rise in racist incidents May-August 2004, available at: <http://www.nccri.ie/pressSep04.html>

⁷⁶ CMRS, *National Report Hungary*, 2004, p.54.

⁷⁷ CEOOR, *National Report Belgium*, 2004, p.19

⁷⁸ The highest court in the French judicial system.

⁷⁹ Cour de Cassation Chambre sociale 02/06/2004 Ste Pavillon Montsouris c X no 02-44904 et X c/ Ste Spot image no 02-45269 (PUBFR 1974)

⁸⁰ Sitaropoulos N. (2003), Executive summary on race equality directive, State of play in Greece

⁸¹ LICHR, *National Report Estonia*, 2004, reference to report at: www.kapo.ee/aastaraamat_2002.pdf.

2.4. New initiatives and awareness training

The RAXEN reports highlight a number of new initiatives taken by Member States, both ‘old’ and ‘new’, particularly regarding three areas:

- Awareness training for the judiciary and administrative bodies
- Awareness training for the police authorities; and
- Action programmes and plans aimed at the elimination of discrimination on racial or ethnic grounds.

All of these initiatives are at a relatively early stage in their development making it difficult to assess their effectiveness. But clearly they do focus on many of the areas identified as causes of concern, in relation to the denial of equal treatment for racial and ethnic minorities. At least five Member States have, or are introducing, awareness training programmes aimed at the judiciary or other administrative bodies. In **Belgium** the Centre for Equal Opportunities and Opposition to Racism has provided training sessions to magistrates and to the police school in Bruges.⁸² In **France** a training module has been developed for representatives of the CFDT union and members elected to the Paris labour court covering EU discrimination law and the shift in the burden of proof.⁸³ In **Lithuania** Ministry of Interior officials working on asylum received training on immigration and asylum policy throughout 2004. A Refugee Legal Clinic has also been established⁸⁴. In **Slovakia** there is to be a training programme for judges, prosecutors, teachers and labour office employees, as part of its action plan.⁸⁵ There are also to be training programmes for the police operating in areas with a significant Roma population.⁸⁶

The reports document a number of action plans proposed or adopted by Member States, including some following the commitments made by Member States at the 2001 World Conference against Racism held in Durban, South Africa. (Others have yet to fulfil their commitment in this regard.) In **Denmark** a national Action Plan to Promote Equal Treatment and Diversity and Combat Racism was adopted following Durban.⁸⁷ In **Ireland**, a National Action Plan Against Racism was adopted by the Cabinet following an extensive consultation process with different stakeholders. In **Slovenia** a Commission for the Protection of Roma ethnic community, a government working party, was established, although later dissolved as a consequence of the dissolution of the old government.⁸⁸ In **Greece**, the Greek National Commission for Human Rights has noted that there is some progress on the exercise of religious freedom of minority groups and that there are some programmes for the betterment of the Roma, in addition to an equal opportunities

⁸² CEOOR, *National Report Belgium*, 2004, p.19.

⁸³ ADRI *National Report France*, 2004, p.20.

⁸⁴ <http://www.redcross.lt>, (15.06.2004)

⁸⁵ NFP Slovakia *National Report Slovakia*, 2004, p.23

⁸⁶ PAR, *National Report Slovakia*, 2004, p.22.

⁸⁷ Details of the plan can be found at:

http://www.inm.dk/publikationer/Handlingsplan_ligebehandling/html/chapter01.htm

⁸⁸ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p.31.

programme for Muslims.⁸⁹ In **Cyprus** a number of action plans have been developed, often in response to Cyprus's accession to the EU, which variously address discrimination, racism and xenophobia – for example, the National Action Plan for Social Inclusion and the Action Plan of the Cyprus Police Force.⁹⁰ In **Portugal** a national plan for immigration has been adopted, which encompasses a number of anti-discrimination measures.⁹¹

In the **Netherlands** four Dutch NGOs have launched a new website⁹² providing information on combating all grounds of discrimination. In **Italy** some regional bodies have introduced consultative bodies against discrimination, for example Emilia Romagna, whereas local government bodies have created special advisors with the power to intervene in cases of double discrimination, such as gender and race.⁹³ The **Slovakian** Action Plan for the Prevention of All Forms of Discrimination, Racism and Xenophobia, Anti-Semitism and Other Expressions of Intolerance includes training programmes for physicians, after the emergence of cases of sterilisation of some Roma women. The Action Plan also includes awareness training among Slovak citizens of human rights in general.⁹⁴ In **Spain** the government is planning to create a fund to support municipalities with higher numbers of foreign migrants.⁹⁵

In **Sweden** a parliamentary committee has been established to consolidate discrimination law and consider affirmative action. A recent report on the extent of discrimination against the Roma has caused the Ombudsman to issue recommendations for special measures to be taken to combat such discrimination. The government has also published two reports on structural discrimination noting that it is a “serious problem” in Sweden.⁹⁶ In the **UK** the advisory service Acas has issued new guidelines on religious discrimination, while the government has funded several faith community organisations. The government also launched a consultation on its race equality strategy, entitled *Strength in Diversity*, together with reports on Gypsies and Travellers and on Islamophobia.⁹⁷ In **Portugal** the High Commissioner for Immigration and Ethnic Minorities has updated and reissued a Guide to the Legal System and Fight Against Racism, which contains most of the relevant legal documents related to the fight against racism and discrimination.

In **Lithuania** an Action Plan for Combating Racism, Xenophobia, Intolerance and Homophobia was prepared by the Seimas Human Rights Committee but has made

⁸⁹ Antigone – Information and Documentation Centre on Racism: Ecology, Peace and Non-Violence, *National Report Greece*, 2004, p.29.

⁹⁰ INEK-PEO, *National Report Cyprus*, 2004.

⁹¹ Númena-Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p. 29.

⁹² <http://www.discriminatie.nl>

⁹³ Emilia Romagna – Law 5/2004, (24.03.2004), available at: [http://cerbd.regione.emilia-romagna.it/NXT_gateway.dll?leggiV_2004_LR-ER-2004-5?f=templates\\$fn=default.htm\\$3.0](http://cerbd.regione.emilia-romagna.it/NXT_gateway.dll?leggiV_2004_LR-ER-2004-5?f=templates$fn=default.htm$3.0) (10.10.2004).

⁹⁴ NFP Slovakia *National Report Slovakia*, 2004, p.23.

⁹⁵ MPDL, *National Report Spain*, 2004, p.51.

⁹⁶ Expo Foundation, *National Report Sweden*, 2004, p.34.

⁹⁷ CRE, *National Report UK*, 2004, p.43.

no progress for lack of the existence of an institution that would be responsible for implementation of the plan.

3. Racism and discrimination in the employment sector and initiatives on how to prevent it

The employment sections of the 25 national reports for 2004 on which this chapter is based demonstrate clearly the continued presence of widespread racist and xenophobic discrimination in European labour markets. The chapter sets out how discriminatory acts and contexts of disadvantage are measured, presents some examples of the specific forms of employment discrimination that are experienced, describes the social groups most vulnerable to racism and discrimination in Europe's labour markets, and finally gives examples of some of the positive ways in which governments, social partners and voluntary organisations are attempting to combat such discrimination.

3.1. The labour market context

A series of economic, social and demographic factors have created the paradoxical situation where many wealthier Member States with continuing pockets of high unemployment and lower than desired levels of labour force participation are simultaneously experiencing regional, sectoral and occupational labour shortages. Some mixed messages have emerged from the measures that have been adopted in recent years. On the one hand the EU has developed policies to outlaw racism and discrimination and to launch initiatives aimed at encouraging excluded groups to fully participate in their national labour markets. Governments and employers have additionally encouraged certain kinds of EU and non-EU migrant workers to come to their countries to fill labour and skill shortages. Several countries have experienced huge growth in the numbers of work permits allocated. In **Ireland**, for example, they went up from 6,000 in 1998 to over 47,000 in 2003.⁹⁸ In the face of the large numbers of undocumented workers who were also 'pulled' in to meet this demand certain Member States, such as **Spain**, **Italy** and **Portugal**, have offered extraordinary regularisations of undocumented migrants. On the other hand, national governments in the EU have faced internal political pressures to be seen to be taking restrictive actions against immigration. As a result, as stated in Chapter 2, a range of policies have emerged to restrict the entry and stay of foreigners, for example, as refugees and asylum seekers, and their access to the labour market, and set stricter criteria for family reunification and marriage, and access to citizenship.⁹⁹

⁹⁸ The numbers applying fell by a third in the three months after EU enlargement. See, The Equality Authority and NCCRI, *National Annual Report 2004 Ireland*, p. 9.

⁹⁹ It should be noted that Directive 2003/86 which regulates the right to family unification had to be transposed only by 3 October 2005, which meant that the Member States were free to regulate the matter themselves in 2004. Directive 2003/9 on the minimum standards for reception of

This mix of policies ‘welcoming’ the contribution of diversity for economic growth while restricting many of those who actually present themselves for work, appears to have provided a very mixed context for issues of equal treatment in employment. Whilst awareness of the illegality of racial discrimination appears to be slowly increasing, legal restrictions give large numbers of workers a status which renders them more vulnerable to exploitation and discrimination. Non-national workers frequently have a temporary or uncertain legal employment and/or residence status. In some Member States migrant workers can work legally only where the employer is ready to vouch for them, and some workers are commonly paid less than national citizens. For example, in **Luxembourg**, a regional labour market with the highest mobility in the EU15, there is a requirement that employers pay a €1,500 bank guarantee for each non-Community employee. The median wage at the end of 2002 for workers from the Americas (excluding the US and Canada) and from Asia (excluding Japan) was 53 per cent of local Luxembourg national’s median wages, and for migrants from Africa it was just 52 per cent.¹⁰⁰

Whilst laws and regulations restricting the rights of third country nationals to employment and residence are in principle legitimate instruments for regulating access to the labour market, (given that the EU Racial Equality Directive does not cover differences of treatment based on nationality), they do constitute a factor which contributes to inequalities and are considered by some to be a form of ‘legal discrimination’. Specific examples of the exploitation or mistreatment of non-nationals through their legal vulnerability are presented in section 3.3.2 of this chapter.

3.2. Patterns of inequality

The national reports from most Member States broadly concur on the emergence of labour markets increasingly segmented by ethnic or national origin.¹⁰¹ The **Portuguese** report states that throughout the last decades some sectors of the labour market have become progressively ethnicised, with immigrants from Africa and more recently, Eastern Europe, in the construction and public works sector, Asian immigrants in trade, restaurants and hotels, and the Europeans and Americans in the category of scientific and technical professionals.¹⁰² These segmented labour markets vary only slightly throughout Europe. In **Germany**, for example, the national report states that non-Germans in the service sector mostly work in branches that are badly paid, that have low prestige and bad working

asylum seekers had to be transposed only by February 2005, and furthermore allows Member States to set the conditions of access to the labour market for family members during the first 12 months of their stay.

¹⁰⁰ CEPS-ISTEAD, *National Report Luxembourg*, 2004, pp.14-15.

¹⁰¹ This tendency is less pronounced in the enlargement country reports, but these do generally refer to long-standing structural differences in labour market participation rates between Roma and non-Roma and national language speakers and other language speakers.

¹⁰² Baganha, M. I., J. Ferrão e J. Malheiros (1999), *Os imigrantes e o mercado de trabalho: o caso português*, in *Análise Social*, vol. xxxiv (150), pp.147-173.

conditions. Twenty-five per cent of all employees in hotel and catering business as well as in cleaning and waste disposal are non-Germans.¹⁰³

The reports, however, do not merely find that migrant workers (or their descendants) from Africa, the Middle East, Asia and Central or Southern America are concentrated in a restricted number of sectors. They also find that they are disproportionately grouped in the lowest occupational categories within sectors. In **Spain**, in January 2004, for example, there was a clear continent-of-origin effect influencing the occupational distribution of non-nationals who were registered in the Spanish social security system. Some 30 per cent of those from Latin America were unskilled workers and 14 per cent were home helps. From Africa these two categories made up 47 per cent and three per cent respectively, and from Asia 19 per cent and nine per cent. Among ‘foreigners’ from the European Economic Area, by contrast, the proportions registered unskilled by the social security were 10 per cent and as home helps, 0.06 per cent.¹⁰⁴

There is evidence that the greater labour market difficulties experienced by non-EU citizens are similar to those of national citizens who were born overseas or whose parents were born overseas and who are visibly distinct. In **Finland**, 2002 the unemployment rate among both non-national migrants and foreign-born Finnish citizens was about three times the level of the whole population.¹⁰⁵ As elsewhere, duration of residence and nationality makes a small difference but the gap remains substantial. Thus while Iraqi citizens in Finland had an unemployment rate of 72 per cent, the unemployment rate of Iraqi-born Finnish citizens was still 64 per cent, compared to nine per cent for Finns.

One explanation for such patterns of inequality is expressed in terms of human capital. The concentration of non-EU migrant workers and their descendants in lower-skilled occupations and lower prestige industries, and their higher rates of unemployment, are sometimes argued to be the result of lower educational attainment. Two studies supporting the ‘low human capital’ thesis are quoted in the **German** national report as saying that “discrimination based on national origin hardly exists”. The authors argue that the disparities on the German labour market are largely attributable to the lack of educational qualifications or to gender and other social structural differences. However, this conclusion is criticised by others for overlooking unexplained ‘residual factors’, as well as the results of discrimination testing, registered complaints and surveys of discrimination experiences.¹⁰⁶ It is also a fact that poor educational performance can itself reflect discrimination experienced within the educational system.

¹⁰³ Vgl. Statistisches Bundesamt 2004a.

¹⁰⁴ Pajares, Miguel (2004), *Inserción laboral de la población inmigrada en Catalunya. Informe 2004*, Barcelona: CCOO-CERES.

¹⁰⁵ One reason for the high unemployment rate for newcomers is that those who participate in training programmes must first register themselves as unemployed.

¹⁰⁶ Cf. Alba, R.; Handl, J.; Müller, W. (1994) „Ethnische Ungleichheit im deutschen Bildungssystem“ (Ethnic dissimilarities in the German education system), in: *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, No. 2 1994, pp. 209-237 (here: p. 210); Suntum, U. van; Schlotböllner D. (2002) Arbeitsmarktintegration von Zuwanderern -Einflussfaktoren, internationale Erfahrungen und Handlungsempfehlungen (Integration of immigrants on the

3.3. Data gaps and measuring discrimination

Previous EUMC Annual Reports have categorised evidence of labour market discrimination under several headings – indirect statistical evidence, direct evidence from actual incidents and complaints as well as from testing experiments, surveys of the minority population, and surveys of the majority population. In 2004 the NFPs found examples under all of these headings, with the exception of the last one.

3.3.1. Indirect statistical evidence

The kind of secondary data which can illuminate patterns of inequality and processes of racial discrimination in employment are generally not available. In terms of existing statistics, the most extensive set of ‘hard’ data concerns unemployment rates for non-national workers. Just under a third of the reports also provide data on work permits, wages and the sectors in which non-nationals are employed. However, there remain many gaps, and in most cases basic data concerning the earnings, sectoral distribution, occupation and accident rates of foreign-born or ethnic minority workers are simply not collected.

Several national reports consider improving ways of measuring discrimination levels. There is general agreement that statistical data showing correlations between ethnic/national origin and unemployment (and labour force participation), wage levels, accident levels, occupational status and sector constitute an important way of indirectly measuring discrimination levels and changes over time. This data could helpfully be extended in new directions, as already occurs in a few countries, by, for example, including other labour market issues, such as whether workers were employed full or part-time and/or their hours of work, or overcoming the constitutional, political and methodological problems faced by many countries in collecting direct data concerning ethnic and national origin.

In particular, this last suggestion has been vigorously debated during 2004,¹⁰⁷ and formed the subject of a major European conference in Helsinki at the end of the year.¹⁰⁸ The problem is that in order to have reliable data on discrimination it is necessary to have information on the main relevant variables, namely on ‘race’, ethnic origin, national origin or religion. In reality, although some countries provide labour force information broken down by nationality or whether ‘foreign-born’, only a few do so with reference to the Roma or using variables such as ethnic origin. The authors of the national reports recognise that this means that data indicating discrimination is hard to come by. For example, in **Slovakia**, the authors of the report acknowledge that there remains “racism, discrimination and prejudice

labour market – factors of influence, international experience and advice for actions), Gütersloh: Bertelsmann-Stiftung, p. 43 EFMS, *National Annual Report 2004 Germany*, p. 8-9.

¹⁰⁷ CEOOR, *National Report Belgium*, 2004, pp.28-29.

¹⁰⁸ European Conference on Data to Promote Equality, Helsinki 9-10 December 2004, see https://eventsi.congreszon.fi/ei/cm.esp?id=161&pageid=_1CI0RRYNN

on the part of employers” against the Roma, but it has been illegal to collect statistical data relating to ethnicity since 2000, and the Slovak National Human Rights Centre has only just started to be legally allowed to monitor discrimination.¹⁰⁹

Some authorities are making steps in the direction of the adoption of such data in the area of employment. For example, in **Belgium** the region of Flanders is exploring methods of ethnic data collection, and discussion has been underway on the difficult topic of which method to use – for example, whether a person self-identifies his or her origin, whether a computer can do it on the basis of the name, and so on. In the context of such difficulties the Walloon and Brussels authorities, as well as the national federal government, have opted not to proceed with ethnic recording methods. Nevertheless, a working group is continuing to explore the issue, and some related research projects have been commissioned.

In one case, where such data used to be collected, the practice has been curtailed. In **Lithuania** ‘Statistics Lithuania’ actually took the decision to stop collecting it in 2004, although it had been collected previously in 2002-2003. The argument used was that the data was incomplete and not consistent enough. In addition its State Data Protection Inspectorate had told the service not to collect ethnic data “that may have been redundant for analysis”. Finally an additional justification was used that “Eurostat neither collects data on ethnicity nor provides the classification tool for registering ethnicity/nationality”.¹¹⁰ It is therefore not surprising that the Lithuanian Department of Ethnic Studies concluded in their national report: “It has to be emphasised that employment peculiarities with regard to ethnicity remain an under-researched area not supported by basic statistics”.¹¹¹

Whilst the greater availability of official statistics according to ethnic and national origin would provide a more solid basis of data, this would not be enough in itself to identify discrimination. For one thing, it is necessary to control for other variables within such statistics, such as educational level and gender. This was done in a recent **Swedish** study which matched foreign-born with Swedish-born workers having the same higher education qualifications, and found that the former were much less likely to be employed in appropriate occupations.¹¹² The low human capital thesis is also challenged in the Spanish national report. This reproduces data from a comparison of the educational levels of the overall **Spanish** population with those of non-EU migrant workers in lower level jobs. It shows almost exactly the same proportions had gone through higher education (19.9 per cent of the Spanish, 19.3 for the non-EU) and slightly more non-EU (50 per cent) having secondary education than among the Spanish (42.3 per cent).¹¹³

¹⁰⁹ NFP Slovakia *National Report Slovakia*, 2004, pp.1, 7.

¹¹⁰ This discontinuation must be understood in the context of the fact that the original collection of ethnically disaggregated data had been carried out as part of the Soviet legacy, forming a very different data collection context and tradition than, for example, found within EU15 countries.

¹¹¹ Department of Ethnic Studies, *National Annual Report 2004 Lithuania*, p. 2.

¹¹² Ekberg, J. and D., Rooth (2004), *Yrke och utbildning på 2000 talets arbetsmarknad – Skillnader mellan inrikes och utrikes födda*, Norrköping, Swedish Integration Board, pp. 21-23.

¹¹³ Pajares, Miguel (2004), *Inserción laboral de la población inmigrada en Catalunya. Informe 2004*, Barcelona: CCOO-CERES.

More detailed statistics combined with multivariate analyses provide a more reliable standard of evidence. But it is still only *indirect* evidence of discrimination. Direct evidence can be seen in actual cases which have come to public or media attention during 2004, often via complaints to NGOs and official bodies, as well as from the evidence of discrimination testing.

3.3.2. Direct evidence - incidents, formal complaints and court cases

Formal complaints about discrimination by ethnic or national origin are made through either an ombudsman or an employment tribunal. There may be differences in jurisdiction between these bodies within one Member State. Thus in **Denmark**, while the new Complaints Committee for Ethnic Equal Treatment may now make assessments on labour market complaints, they will not do so if a trade union chooses to represent the complainant, in which case the complaint goes before the customary employment tribunal.¹¹⁴ In Denmark, as in many other countries, there have been concerns that when legislation is relatively new, those who sit in judgement in the employment tribunal system are not specialists in discrimination, and will tend to 'play safe'.

It was also observed that in some cases workers will not make formal complaints for fear of sanctions by employers. This phenomenon was noted in the experiences of an NGO in **Austria** which assists victims, and also in the experiences of labour inspectors in **Slovenia**.¹¹⁵ Formal complaints procedures involve so few workers and are so closely correlated to the presence or otherwise of support mechanisms that it is not at all likely that the numbers complaining (ranging from four in Slovenia to 2,830 in the UK) give a real indication of true levels of discrimination. Informal complaints services that are easily and nationally available may encourage a more broad range of complaints, but on condition that public attention is consistently drawn to them.

Even within one country, changing levels of complaints will not necessarily reflect changes in the level of discrimination. In the **UK** the number of complaints to the Commission for Racial Equality dropped from 761 in 2002 to 486 in 2003. But this could reflect the spread of awareness that the Commission is now supporting fewer cases with legal representation and has reduced resources for dealing with enquiries.¹¹⁶ In **France**, the installation of the '114' discrimination help phone line triggered 50,000 calls during its first two years, of which 12,000 were transformed into notifications.¹¹⁷ However these numbers have fallen away quite substantially since June 2003 when the line became a fully automated service.

¹¹⁴ DACORD, *National Report Denmark*, 2004, p.12.

¹¹⁵ Slovenia, Ministry of Labour, Family and Social Affairs – Labour Inspectorate of the Republic of Slovenia (2004), *Poročilo o delu za leto 2003*; and NFP Austria, *National Report Austria*, 2004, p.17.

¹¹⁶ CRE, *National Report UK*, 2004, p. 18.

¹¹⁷ <http://www.social.gouv.fr/htm/pointsur/discrimination/stats114.htm>

While these sources might not provide evidence on changing levels of discrimination over time, they do provide an important insight into the centrality of the area of employment in complaints. In the first six months of 2004, access to employment and professional life each constituted 27 per cent of processed complaints received by the French ‘114’ help line, while professional training constituted a further seven per cent.¹¹⁸

It seems that complaints often relate to problems experienced within the workplace itself, rather than in access to work. This is probably because discriminatory treatment in recruitment is usually invisible to the victim. In the **Netherlands** in 2003, of the 634 labour-related complaints¹¹⁹ reported by the National Federation of Anti-Discrimination Agencies, 42 per cent arose from shop floor situations compared to 24 per cent in relation to recruitment and selection and 12 per cent about dismissal.¹²⁰

SPECIFIC CASES

Examples of cases which came to attention in 2004 include one from the **Netherlands**, where a Surinamese-origin woman working as a temp in an international consulting firm found a fax letter from her manager to her agency stating her “attitude is correct but very ‘Surinamese’”. After she lodged a complaint her manager became more openly hostile, and the firm did not act to settle the issue.¹²¹

Another type of complaint from the workplace concerns those concerning racist abuse by fellow workers. An extreme case of mental and physical racist bullying at work was described in **Austria**, where a Jordanian man was called “camel driver” or “stupid Arab” by his colleagues and finally was beaten up so badly he had to go to hospital. His employer had only given him a proper work contract after he had worked for a year, and denied all knowledge of and responsibility for the assault.¹²²

Dismissals also feature in many of the examples of racist or xenophobic discrimination provided in the national reports. Thus in **Denmark** a Muslim man was fired from his job in a Christian organisation in February 2004 because of his religion.¹²³ In this case the employer argued that because the transposition of the Framework Directive did not happen in Denmark until April 2004, it was not unlawful to fire the employer on grounds of his (non-Christian) religion.

¹¹⁸ GIP-GELD Internal statistics from January 2004 to June 2004.

¹¹⁹ These amounted to 17.7 per cent of total complaints - ¹¹⁹ DUMC, *National Report Netherlands*, 2004, p.13.

¹²⁰ National Federation of Anti-Discrimination Agencies and Hotlines (2004), Key figures 2003. Annual survey of complaints of discrimination lodged with anti-discrimination bureaus and hotlines, p.24.

¹²¹ DUMC, *National Report Netherlands*, 2004, p.49.

¹²² *Kurier*, (18.12.2004), “‘Geh ham in die Wüste’, schimpften die Kollegen”, p. 68 [NFPAT0139] and mail from Eva Matt, legal counsellor working for ZARA-Zivilcourage und Anti-Rassismus-Arbeit, (11.01.2005)

¹²³ DACORD, *National Report Denmark*, 2004, p.58.

Another type of dismissal can be categorised as indirect discrimination, where apparently neutral grounds for dismissal can be seen as disproportionately affecting members of one group rather than another. A common form of indirect discrimination is to stipulate a level of language proficiency which is unnecessarily high for the position. One alleged such case was highlighted in **Estonia** by the Legal Information Centre for Human Rights (LICHR) after their client, a nurse from the Russian-speaking minority, was dismissed from her post in a prison because it had been upgraded to a level that required a higher level Estonian language proficiency than she possessed.¹²⁴ Whilst the LICHR argued that this upgrading was not reasonable for a nurse's post, the Legal Chancellor ruled that in this case the raising of language requirements was proportional and justifiable.

Having said that discrimination in recruitment is usually difficult to identify because it is invisible to the victim, this may apply more to the EU15, where employers are more experienced in hiding discrimination. In the EU10 there were several blatant examples reported, most notably concerning the Roma populations. In **Poland** a Roma woman responding to a newspaper advertisement for a waitress was initially well received because the employer thought she was a sanitary inspector. But when she explained she was looking for work she was directly told the employer did not hire "Gypsies" because they would "scare off clients".¹²⁵ In **Latvia** an employer refused to hire a woman after he found out her father was of Roma origins.¹²⁶ In **Hungary** a hotel manager told a receptionist faced by a Roma job applicant, "I do not hire Gypsies here, I hate them all", while the manager of a security firm told a certificated Roma security guard that his clients would not accept Roma staff.¹²⁷

Recruitment issues were also highlighted in the **Austrian** report, where complaints were registered about job placement agencies and newspapers advertising job vacancies with references to 'Natives only'.¹²⁸ However, in many other Member States such 'openness' would not, or could not, be tolerated, and discriminatory preferences in recruitment remain hidden and unspoken. For this reason, the method of discrimination testing is often used to bring the phenomenon to the surface (see section 3.3.3).

¹²⁴ LICHR, *National Report Estonia*, 2004, p.11.

¹²⁵ HFHR, *National Report Poland*, 2004, p.10.

¹²⁶ Information provided by the LNHRO on 12 October 2004; LCHRES, *National Report Latvia*, 2004, p.6.

¹²⁷ CMRS, *National Report Hungary*, 2004, pp. 10-11.

¹²⁸ Einführungsgesetz zu den Verwaltungsverfahrensgesetzen (EGVG) 1991 – Austria / BGBl 50/1991, (31.01.1991) last amended by BGBl I 137/2001, (27.11.2001); Perez-Sola, M. (2004) "The ZARA 'No Foreigners' Campaign", in: ZARA, *Racism Report 2003*, available at: <http://www.zara.or.at/materialien/rassismus-report/racism-report-2003.pdf>, pp. 51-52; NFP Austria, *National Report Austria*, 2004, p.18.

LEGAL STATUS AND VULNERABILITY

As stated at the beginning of this chapter, legal restrictions on their status make it difficult for some workers to resist exploitation and discrimination. For one thing, being on a restricted permit makes it more difficult to complain. In **Cyprus** the immigration authorities first denied an application by a Filipino worker to change his employer because of his allegations of bad working conditions, and then decided to repatriate him¹²⁹. Also, in the case of a domestic help who was involved in a labour dispute with the employer, the police arrested the help the day after she had left the employer's house.¹³⁰

Undocumented workers are less able to resist pressure by their employers to work very long hours and in dangerous conditions. In **Belgium** a report on human trafficking exposed the case of undocumented workers being exploited in bad working conditions for 10 to 11 hours per day in a clothing business.¹³¹ One undocumented Latin American woman personal care worker in **Spain** was reported as having only two free hours a week to herself. In March 2004 the Spanish police arrested an employer and foreman who managed five undocumented foreign workers and had obliged them to handle toxic chemical products without any protection.¹³² In **Malta**, the national report suggests that any employment discrimination that occurs is largely confined to 'irregular immigrants'.¹³³

3.3.3. Direct evidence - discrimination testing

The clearest data on discrimination in recruitment comes from discrimination testing, a method which utilises matched pairs of testers, one belonging to a majority group and the others to minority ethnic groups, all of whom "apply" for the same jobs. The testers are matched for all the criteria which should be normally taken into account by an employer, such as qualifications and experience. If over a period of repeated testing the applicant from the majority background is systematically preferred to the others, then this points to the operation of discrimination according to ethnic origin. Sometimes the direct discrimination becomes immediately apparent when, for example, the minority candidate is told that the vacancy is no longer available, and the majority candidate is told ten minutes later that the job is still open. In country after country, where the outcomes of equal matched applications for jobs, whether real or fictitious, are compared, the results are similar: those with 'foreign' and particularly Arabic-sounding names with exactly the same qualifications as those with 'national' names are consistently excluded from interviews and hence from employment.

Last year's EUMC Annual Report made reference to only one piece of discrimination testing carried out in 2003, namely that commissioned by the ILO in

¹²⁹ Cyprus Commissioner of Administration, Complaint No. 641/2002.

¹³⁰ INEK-PEO, *National Report Cyprus*, 2004, pp. 12-13.

¹³¹ CEOOR, *National Report Belgium*, 2004, p.31.

¹³² MPDL, *National Report Spain*, 2004, p.33.

¹³³ JCFJ, *National Report Malta*, 2004, p.9.

Italy as part of their ongoing programme.¹³⁴ This identified systematic discrimination against Moroccan applicants in the Italian labour market. In 2004 a whole range of such examples were reported. In **France** the Monitoring Centre on Discrimination¹³⁵ at the University of Paris 1 sent seven different standard *curricula vitae* in response to 258 job advertisements for a sales person. Job applicants with a disability turned out to be the main victims of discrimination, followed by applicants of African and North African background.¹³⁶

The **Hungarian** national report notes that the NGO Legal Defence Bureau for National and Ethnic Minorities (NEKI),¹³⁷ sometimes applies the “testing method”, by sending Roma and non-Roma actors to employers for job vacancies, as part of the process of collecting evidence for possible legal proceedings. In **Germany** the office of the Commissioner for Foreigners of the federal state of Brandenburg tested 54 job offers via telephone, and in eight cases the reaction was described as “clearly discriminatory”, in that applicants with Turkish names were told that the job had already been taken or that they should send a written application, whereas the German applicants were either accepted right away or were invited to a job interview.¹³⁸

It is noticeable that variations of this method are increasingly being carried out by newspapers and TV broadcasters, perhaps because of the appeal of its relative simplicity and newsworthiness. For example, in the **UK** the BBC's Radio Five Live programme¹³⁹ carried out an exercise where 50 firms received applications from six fictitious candidates with names strongly suggesting white British, African or Muslim background. The white candidates were more likely (twenty five per cent) than the black (thirteen per cent) or Muslim (nine per cent) applicants to be invited to interview.

A more ambitious exercise was carried out in September 2004 by **Sweden's** main news paper *Dagens Nyheter*¹⁴⁰ which employed four young reporters, two with Swedish names and two with foreign, Middle Eastern, names, to make 366 telephone calls to businesses in four branches (restaurant, trade, schools and construction). The results showed that discrimination was highest in the restaurant branch, with 22 per cent, and lowest in the school sector, with 2 per cent. At the

¹³⁴ See *Labour market discrimination against migrant workers in Italy* E. Allasino, E. Reyneri, A. Venturini & G. Zincone, International Migration Papers 67, ILO Geneva 2004

¹³⁵ The Research Center on Organisation and Social Relations Management (CERGORS) initiated this new monitoring centre to develop studies and research in all kinds of discrimination.

¹³⁶ Study carried out between April 13th and May 14th, 2004, source: The Monitoring Centre on Discrimination.

¹³⁷ Discrimination testing projects are now being formulated with the involvement of the colleagues of the CMRS.

¹³⁸ Cf. Berger, A. (2003) Diskriminierung – ein Alltagsproblem in Brandenburg? Tagungsdokumentation „Interkulturelle Verständigung – (nicht nur) ein Standortvorteil“ am 20. März 2003 in der Industrie- und Handelskammer (IHK) Potsdam, pp. 4-9; available at: www.brandenburg.de/media/1333/broschuere.pdf (05.10.2004)

¹³⁹ BBC (2004) 'Shocking' racism in jobs market, available at <http://news.bbc.co.uk/1/low/business/3885213.htm>, (24.09.2004)

¹⁴⁰ *Dagens Nyheter*, (06.09.2004), De utestängda. Vart femte jobb är stängt för invandrare. (PUBSE0431)

other end of the scale was the testing in the **Netherlands** reported in a newspaper in May 2004, carried out by one man of Moroccan origin in a personal form of situational testing. If he applied under the name Verduin he was in most cases invited to come for an interview, but if he applied for the same job opening under the name Nassiri he was either completely ignored (the most common response) or was rejected out of hand.¹⁴¹

A rather different version of testing, not using matched pairs of applications, but equally effective in exposing practices of discrimination, was carried out by a **Danish** television programme in September 2004. A journalist pretending to be a private building contractor called 24 of the regional state-run employment offices requesting workers who were 'Danish nationals', and in only one office did an employee refuse to cooperate with this request.¹⁴² Three months later the Danish newspaper *Ekstra Bladet* described how six out of eight private job agencies accepted a discriminatory instruction in relation to the hiring of replacement workers, guaranteeing that the worker would be a 'native Dane'. The national report states that cases of this kind would be handed over to the Complaints Committee for Ethnic Equal Treatment in order to make an assessment of whether such cooperation with instructions to discriminate is a violation of the new legislation implementing the EU Race Equality Directive¹⁴³ in Denmark.

3.3.4. Surveys of the minority population

Surveys of minority populations are a way of revealing their subjective impressions and experiences regarding discriminatory treatment. One survey carried out in 2004 was that of **Finland's** minority populations, which confirmed that those who most frequently reported employment discrimination were "those whose physical appearance distinguishes them from the majority population – namely Somalis and Arabs". They were nearly 40 per cent more likely to report having experienced bullying at the workplace than were migrant workers of Russian or Estonian origin.¹⁴⁴

3.4. Europe's vulnerable groups

The map of Europe's vulnerable minorities varies slightly from one country to another. Yet there is a consistency about the national and ethnic origins of those who experience the most discrimination. Far ahead in their structurally reinforced exclusion are the Roma and Travellers. For them labour market exclusion is the norm, and in some of the new Member States where there are relatively few non-

¹⁴¹ *De Volkskrant* (21.05.2004), p. 8

¹⁴² DACORD, *National Report Denmark*, 2004, p.10.

¹⁴³ 2000/43/EC, (29.06.2000), Council Directive

¹⁴⁴ Jasinskaja-Lahti, I., Liebkind, K. & Vesala, T. (2002), *Rasismi ja syrjintä Suomessa. Maahanmuuttajien kokemuksia*. [Racism and Discrimination in Finland. Experiences of Immigrants]. Helsinki: Gaudeamus.

nationals or other national minority groups present, the discrimination against them is virtually the only form of racist treatment that is reported.

The national reports of 2004 confirm a dramatic picture of marginalisation of the Roma from labour markets in the new Member States of the 2004 enlargement. In the **Czech Republic**, it was mostly Roma who became unemployed at the start of the transition process since they were the least educated and in the most basic jobs that tended to disappear first. Unemployment among the Czech Roma is estimated at around 70-80 per cent.¹⁴⁵ In early 2004 **Slovakia's** liberal tax and social reforms, which severely reduced social benefits, sparked serious social unrest and outbreaks of violence among the Roma population.¹⁴⁶ In **Poland** it is reported there are whole regions where the unemployment rate of the Roma population nears 100 per cent, and only occasional Roma individuals have work.¹⁴⁷ In **Hungary**, data from a 2003 representative survey show the same labour market participation rate for Roma in 2003 as in 1993, at just 21 per cent for both men and women (compared to 50 per cent for the whole population). It is not surprising to find then, that more than 80 per cent of Hungary's Roma households are located in the lowest two income deciles.¹⁴⁸ The picture is in general one of little or no work, with heavy discrimination in recruitment, and where jobs do exist they are very low paid.

In the rest of Europe, while the specificities vary according to the detailed historical trajectory of migration, there is a broad pattern. The least level of integration into normal national labour markets tends to be experienced by those of Arab nationality or appearance, those with the darkest skins, and by recent migrants from Eastern Europe, followed by those from the Indian sub-continent and parts of Asia. Some of the national reports provide specific rankings. For **Germany**, the national report reveals a hierarchy of unemployment levels, with the highest level amongst those from Turkey, followed by those from Italy and Greece.¹⁴⁹ In **Sweden** the two highest rates of unemployment are experienced by those from Iraq and Africa,¹⁵⁰ and in **Italy** it is reported that most industrial injuries are experienced by those from Morocco, Albania and Tunisia.¹⁵¹

¹⁴⁵ See report „Great Britain and the CR: a twinning project support for racial ethnic equality“, available at <http://www.diskriminace.cz/dp-bydleni/twinning.phtml> (12.11.2004)

¹⁴⁶ NFP Slovakia, *National Report Slovakia*, 2004, p.1.

¹⁴⁷ HFHR, *National Report Poland*, 2004, p.10.

¹⁴⁸ Janky, B (2004), „A cigányok jövedelmi helyezete“, in: Kolosi, T - Toth I. Gy - Vukovics, Gy (eds) *Társadalmi Riport*, Budapest: TÁRKI

¹⁴⁹ Vgl. Statistisches Bundesamt 2004a (text part / chapter 7)

¹⁵⁰ Sweden, Statistics Sweden (2003), Labour Force Surveys (AKU), statistics from the second half year 2003.

¹⁵¹ INAIL (2004), Dati provvisori aggiornamento febbraio 2004.

3.5. Preventing employment discrimination

Several national reports raise concerns that while labour market anti-discrimination law and policy have either been in place for some time, or were implemented recently, the reality in many labour markets is that xenophobia and racism still make their presence felt, and that attitudes and practices still need to change. In **Sweden**, where an Ombudsman against Ethnic Discrimination was appointed in 1986 and now produces an annual review of employer compliance with anti-discrimination legislation, the latest audit concludes that “Employers often refuse to engage themselves in the prevention of ethnic and religious harassment, as well as against discrimination in working conditions and in their promotion of a recruitment process independent of ethnic or religious affiliation.”¹⁵²

In the **UK**, where the Commission for Racial Equality was set up in 1976, a secondary analysis of the most comprehensive national survey of workplace employment relations conducted in 1998 found there was still “scope for the extension of equal opportunities policies among workplaces in Britain, particularly in the areas covered by the Directives”. Similarly, another study concludes that if a large proportion of workplaces have equal opportunities policies, they “have not introduced supporting practices”.¹⁵³

If countries like Sweden and the UK are still facing significant gaps between policy expectations and labour market realities, many other Member States have an even longer way to go. Having said this, there are many examples of positive steps to raise awareness of the importance of anti-racism and diversity and to integrate excluded vulnerable minorities into European labour markets. One significant observation is that many of the examples highlighted in the twenty-five national reports are specifically linked to national programmes implementing European Directives and/or having access to European funds. The breadth of such examples does suggest that the European Union is playing a significant role in encouraging social cohesion and combating discrimination.

National governments, and regional and local authorities also play important roles in shaping initiatives, as well as some private sector companies. In **France** there is a Charter for the Equality of Opportunities, where a committee of company directors, headed by a leading businessman, is piloting a programme aimed at companies committed to diversity.¹⁵⁴ In **Germany**, some larger companies like Ford have already developed anti-discriminatory codes of conduct or made agreements on these issues with the trade unions. Also in Germany is there a national ESF co-funded programme, ‘Xenos – living and working in diversity’, that funds 255 different projects, many of which are also seeking to develop anti-discriminatory ‘codes of good practice’ at local level.¹⁵⁵ The German medium-sized

¹⁵² Sweden, Ombudsman against ethnic discrimination (2004), *Arsredovisning 2003*. Stockholm.

¹⁵³ Summary of Anderson, T, Millward, N and Forth J. (2004) *Equal Opportunities policies and practices at the workplace: secondary analysis of Workplace Employment Relations Survey 98*, Employment Relations Research Series No 30, London: Department of Trade and Industry’, p.8.

¹⁵⁴ ADRI, *National Report France*, 2004, p.10.

¹⁵⁵ www.xenos-de.de (05.10.2004); EFMS, *National Report Germany*, 2004, pp. 12-13.

company employers' association BVMW is encouraging its members to sign up to a declaration committing themselves to the principles of equal treatment, and this entitles them to use a special 'open-minded – against discrimination' logo on their publicity.¹⁵⁶ In **Belgium** the Federal Civil Service has embraced a policy of praising those who practice non-discrimination, and hence public service awards are to be presented to departments that establish good practices.¹⁵⁷ More pro-actively, the Federal Minister of the Civil Service has initiated a project, in collaboration with the Centre for Equal Opportunities and Opposition to Racism, which aims to promote diversity management in institutions of the federal civil service.

To help make initial recruitment processes fairer, the **French** Rhone Prefecture has been encouraging the local employment service to send employers anonymous details of job-seekers, where the applicants' last names and addresses are missing.¹⁵⁸ This would tackle the problem revealed in the 'discrimination testing' experiments (section 3.3.3) that some employers operate a first stage rejection of applicants according to their 'foreign' names.

Another approach to increasing employment opportunities for national and ethnic minorities has been taken in **Germany** by the Berlin Commissioner for Foreigners. There, 200 new apprenticeship positions were created through giving non-German born company owners the training that entitled them to take on and train apprentices.¹⁵⁹ Of course the danger with this approach is that it could lead merely to 'ethnic niche' employment. But if the acquired skills are transferable then that danger could be avoided.

A concern to improve relations between migrant and national workers at the workplace was behind an initiative of a trade union official in **Malta**. He persuaded a construction company that made extensive use of Eastern European migrants to create multi-national work teams, so that migrants and Maltese mixed more both at work and socially in breaks.¹⁶⁰

Targeting Roma was the objective of the PHARE-funded 'Qualifying Roma for Professional Radio Journalism' programme in **Slovenia**. In this case only a handful could be trained but the objective is to be able to launch a Roma radio station.¹⁶¹ In **Hungary**, one EQUAL project has 138 Roma participants involved in training programmes to work on heavy machines, forestry, in floristry and as shop assistants, and a further 60 participants in a programme aimed at increasing the organisational development and project management skills of Roma

¹⁵⁶ Press release BfDT/BVMW 08.12.2004 ; Cf. BfDT and BVMW (2004) *Mittelstand weltoffen – gegen Diskriminierung*, BfDT: Berlin, p.5; Declaration printed on p. 23; available at <http://www.buendnis-toleranz.de> (04.01.2005).

¹⁵⁷ CEOOR, *National Report Belgium*, 2004, p.31.

¹⁵⁸ See <http://www.novethic.fr/novethic/site/article/index.jsp?id=76429>

¹⁵⁹ Berlin, Beauftragte für Integration und Migration des Senats von Berlin (2004) *Integrationspolitische Schwerpunkte 2003-2005*, p. 7; PUBDE 1392; available at: www.berlin.de/sengessozv/auslaender/Integrationspolitische_Eckpunkte.pdf (05.10.2004).

¹⁶⁰ JCFJ, *National Report Malta*, 2004, p. 10.

¹⁶¹ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p. 16.

communities.¹⁶² In **Spain** ESF funds have been used under the Acceder programme to access over 11,000 Roma and to provide training to more than 3,000 over the four years to December 2003 and to create an on-going Observatory on Employment and the Roma Population.¹⁶³

Finally, in a different but still important way, an EU-funded action programme in **Italy** also supports labour market integration by migrant workers. In this case the project identified those banks that allowed migrant workers to easily open current accounts and others that provided a cheap loan scheme of migrants wishing to start their own businesses.¹⁶⁴

¹⁶² CMRS, *National Report Hungary*, 2004, p.12.

¹⁶³ FSGG (2003-2004), "Programa Operativo Acceder. Análisis y balance de resultados a diciembre de 2003", in: *Gitanos. Pensamiento y Cultura*, Núm. 22-23, pp. 26-30; FSGG (2003-2004), "Cruz Roja Española. Inserción laboral de inmigrantes", in: *Gitanos. Pensamiento y Cultura*, Núm. 22-23, pp. 47-48.

¹⁶⁴ L'imprenditorialità immigrata: caratteristiche, percorsi e rapporti con il sistema bancario, Rapporto finale, ottobre 2004.

4. Racism and discrimination in the housing sector and initiatives on how to prevent it

This chapter looks first at the type of data and information available on discrimination in housing, and then looks at evidence of direct and indirect discrimination and the ways that these are manifested. It considers problems of access to housing, inappropriate housing and segregation, and finally sets out examples of good practice and preventive initiatives against discrimination.

4.1. Types of data and information available

There is a general lack of national official publicly available data on discrimination and racism in the housing sector in the 25 EU Member States. When data is available it is often insufficient or inadequate to allow proper conclusions to be made on patterns of discrimination. However, a small amount of data is rooted in official statistics and several countries refer to official or governmental reports as a source of information, some of them including a special focus on the Roma minority group. In a number of Member States there are official institutions and specialised bodies which examine and record complaints and collect relevant data on discrimination and racism which include the housing sector, such as Commissions, Consultative Committees and the Offices of the Ombudsman.

In the absence of official statistics, research data in this area takes on added significance. In almost all Member States specific studies, research and surveys on the general issue of discrimination are undertaken. Several reports focus on (or at least include) the sector of housing. In **Denmark**, for example, the Catinét Research touches briefly the issue of discrimination in the housing sector,¹⁶⁵ and **Germany's** information on discrimination in the housing area originates to a large extent from studies and surveys.¹⁶⁶ In **Spain**¹⁶⁷ and **Finland**¹⁶⁸ some research focused

¹⁶⁵ Integrations Status 1. halvår 2004, CATINÉT Research 2004, Copenhagen.

¹⁶⁶ E.g. Stiftung Zentrum für Türkeistudien (ed.) (2004) *Türkei-Jahrbuch der Stiftung für Türkei-Studien 2004/2005*; Survey of the Federal Ministry for Labour and Social Affairs 2002 and Gestring, N., Janßen, A., Polat, A. (2003), *Processes of Integration and Exclusion. Second Generation Turkish Migrants in Hannover*, Oldenburg.

¹⁶⁷ E.g. Aparicio, Rosa (2003), *Inmigrantes y vivienda en la Comunidad Valenciana*, Valencia: Centro de Estudios para la Integración Social y Formación de Inmigrantes, Generalitat Valenciana, Provincia de Aragón de la Compañía de Jesús; Sodepau Federació d'Associacions de Veïns i Veïnes de Barcelona (2003), *Informe sobre discriminació a la població immigrada en l'accés a l'habitatge de lloguer a Barcelona*, available at <http://www.sodepau.org>, (21.05.2004).

¹⁶⁸ E.g. Mikkonen, A. & Kärkkäinen, S-L. (2003), *Homeless Immigrants in Finland. National Report 2002*, Helsinki: National Research and Development Centre for Welfare and Health.

on housing-related discrimination against migrants. Policies concerning the housing situation of refugees in France were analysed by a study produced by Nice University.¹⁶⁹ In **Luxembourg**, a survey on the presence of racist attitudes in the choice of neighbourhoods¹⁷⁰ and a poll on the different levels of acceptance of multiculturalism were conducted.¹⁷¹ In the **United Kingdom**, several studies, such as on discrimination and service provision,¹⁷² on the future and viability of black and minority ethnic Housing Associations¹⁷³ and on housing and social cohesion¹⁷⁴ were carried out. The report from **Malta** refers to a survey in connection with a TV discussion which dealt with the subject of racism and the attitudes of the Maltese population to their neighbours.¹⁷⁵ Several countries conducted studies on the phenomenon of segregation such as **Spain**,¹⁷⁶ **Portugal**¹⁷⁷ and **Sweden**¹⁷⁸ and in various Member States, such as in **Greece**,¹⁷⁹ **Lithuania**,¹⁸⁰ **Hungary**,¹⁸¹ **Slovenia**¹⁸² and **Finland**,¹⁸³ research on the housing situation of the Roma communities was carried out.

¹⁶⁹ Université de Nice-Sophia Antipolis (2004), L'hébergement des demandeurs d'asile comme enjeu local. Eléments d'analyse et perspectives méthodologiques à partir du cas des Alpes-Maritimes, Nice, Université de Nice-Sophia Antipolis.

¹⁷⁰ Legrand M. (ed.) (2002), *Les valeurs au Luxembourg*, Luxembourg: Saint-Paul.

¹⁷¹ <http://www.ilres.com/index2.html>, (12.10.2004).

¹⁷² Chahal, K (2004) *Experiencing ethnicity: discrimination and service provision*, York: Joseph Rowntree Foundation.

¹⁷³ Lupton, M. & Perry, J. (2004) *The future of BME Housing Associations*, Coventry: Chartered Institute of Housing.

¹⁷⁴ Robinson, D. Coward, S. Fordham, T. Green, S. and Reeve, K. (2004) "How housing management can contribute to community cohesion", Coventry: Chartered Institute of Housing in Blackaby, B (2004) *Community cohesion and housing: A good practice guide*, Coventry: Chartered Institute of Housing.

¹⁷⁵ Malta Polls/ here's Everybody (2004) "Il-Maltin ur-Razzizmu" reported on Xarabank programme (02.07.2004).

¹⁷⁶ E.g. Martori, J.C.; Hoberg, K. (2004), "La segregación residencial com a eina d'estudi de la població immigrant", in Aja, E.; Nadal, M. (Drs.), *La immigració a Catalunya avui*, Anuari 2003, Barcelona: Fundació Jaume Bofill, Editorial Mediterrània.

¹⁷⁷ E.g. Malheiros, J. (1998) "Segregação socioétnica na região metropolitana de Lisboa" in *Sociedade e Território* 30; Fonseca, L. Et al. (2002), *Immigrants in Lisbon. Routes of integration*, Centro de Estudos Geográficos, Estudos para o planeamento Regional e Urbano Nº56, Lisboa, Universidade de Lisboa.

¹⁷⁸ E.g. Andersson, R and I. Molina (2003) "Racialization and Migration in Urban Segregation Processes, Key issues for critical geographers" in Öhman, Jan & Simonsen, Kirsten (eds.) *Voices from the North - New Trends in Nordic Human Geography*, Ashgate.

¹⁷⁹ E.g. Hellenic Agency for Local Development and Local Government SA (EETAA) (2001) *Olokliromeno Programma Drasis gia tous Ellines Tsigganous*, Athens: EETAA.

¹⁸⁰ E.g. <http://www.roma.lt>, (10.09.2004); Darbo ir socialinių tyrimų institutas (2001), *Romų gyvenančių Vilniaus miesto teritorijose, sociologinis tyrimas*; Darbo ir socialinių tyrimų institutas (2003), *Prieglobstį Lietuvoje gavusių asmenų ir jų šeimos narių socialinių ir profesinių poreikių tyrimas*, available at http://prieglobstis.lt/wt_pr/customfiles/Lt_Tyrimo%20pristatymas.doc (28.09.2004).

¹⁸¹ http://beszelo.c3.hu/04_04_13kemeny.htm E.g. Kopasz, M. (2004) "Lakóhelyi szegregáció és társadalmi feszültségek a magyarországi településeken", in *Társadalmi riport 2004*, Budapest: TÁRKI; Bölöni, K. (2004) *Immigration of the poor to Józsefváros*, manuscript.

¹⁸² E.g. Zupančič, J. (2003) "Roma problems in the light of spatial relations", in: Klopčič, V., Polzer, M. (eds.) *Evropa, Slovenija in Romi: zbornik referatov na mednarodni konferenci v Ljubljani, 15. februarja 2002*, Ljubljana: Inštitut za narodnostna vprašanja.

¹⁸³ E.g. Suonoja, K. & Lindberg, V. (2000), *Strategies of the Policy on Roma*, Helsinki: Ministry of Social Affairs and Health.

In many Member States evidence on discrimination in the housing sector is further brought to light by various non-governmental organisations (NGOs). In **Denmark** the non-profit Documentation and Advisory Centre on Racial Discrimination¹⁸⁴ records cases and complaints regarding the housing sector. Important sources of information in **Germany** are the regional and local anti-discrimination offices.¹⁸⁵ Data and information in **Greece**, especially concerning discrimination against Roma, is found in reports by NGO such as the Greek Helsinki Monitor and “SOS Ratsismos”.¹⁸⁶ **Spanish** NGOs like “SOS Racismo” and their local offices represent excellent sources of information on discrimination in the housing sector in Spain.¹⁸⁷ Also the RAXEN reports on **Belgium**,¹⁸⁸ **Italy**¹⁸⁹ and **Luxembourg**¹⁹⁰ refer to NGO project reports and testing results on housing. In **Austria**, the data collected refers mainly to counselling organisations, such as “ZARA”¹⁹¹ and “Wohndrehscheibe”¹⁹² as well as surveys.¹⁹³ **Portugal** bases its information and data on recorded cases of discrimination of NGOs such as “SOS Racismo,” “Frente Anti Racista,” “Solidariedade Imigrante” and “Olho Vivo”¹⁹⁴ and also in **Poland**¹⁹⁵ and **Cyprus**¹⁹⁶ data refer to NGO reports. In the **Czech Republic** a case study was published by the Counselling Centre for Citizenship, Civil and Human Rights summarising the experience gained through its law projects, especially in the field of housing¹⁹⁷ and the NGO “People in Need” reported on the situation of Roma in Přebíslav.¹⁹⁸

Only a very small amount of material in the NFP reports refers to court cases¹⁹⁹ and media reports²⁰⁰ as an important source of information.

¹⁸⁴ See <http://www.drcenter.dk>.

¹⁸⁵ Antidiskriminierungsbüro Berlin, Jahresbericht 2002, <http://www.adb-berlin.org/jahresbericht2002.doc>, (05.10.2004) and AMKA (2004) Ausführungsbestimmungen über das Verfahren und die Feststellung von Verstößen gegen die Antidiskriminierungsrichtlinie der Stadt Frankfurt am Main.

¹⁸⁶ Antigone – Information and Documentation Centre on Racism; Ecology, Peace and Non-Violence, *National Report Greece*, 2004, p.34.

¹⁸⁷ E.g. S.O.S. Racismo (2004), *Informe anual 2004 sobre el racismo en el Estado español*, Barcelona: Icaria Editorial, available at <http://www.sosracismo.org/sosracismo/dossier/Dossier%20de%20premsadib.pdf>, (01.08.2004).

¹⁸⁸ Action pour le logement accessible aux réfugiés à Molenbeek (ALARM) and MRAX Campaign, <http://www.mrax.be>.

¹⁸⁹ COSPE, *National Report Italy*, 2004, p.34.

¹⁹⁰ NFP Luxembourg, *National Report Luxembourg*, 2004, p.44.

¹⁹¹ ZARA, *Racism Report 2003*, available at <http://www.zara.or.at/materialien/rassismus-report/racism-report-2003.pdf>, (30.09.2004).

¹⁹² Volkshilfe Österreich, Wohndrehscheibe, Jahresbericht 2003, Wien available at <http://www.volkshilfe.at/>.

¹⁹³ E.g. Integrationsleitbild der Marktgemeinde Guntramsdorf mit Maßnahmenplan and in Vorarlberg <http://www.okay-line.at/>.

¹⁹⁴ Númena- Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.35.

¹⁹⁵ E.g. Białystok “Caritas” Refugee and Migrant Assistance Centre.

¹⁹⁶ E.g. Immigrant Support Action Group Public Debate: Xenophobia – Discrimination – Racism: From declarations to praxis? New EU measures and their application in Cyprus, 21.03.2004, Intercollege, Nicosia.

¹⁹⁷ Boučková, P. (2003) “Brát diskriminaci vážně”, in *Buletín OSF Praha*.

¹⁹⁸ People in Need (2004) Report about the situation in Přebíslav for the purposes of the Inter-ministerial Commission for Roma Community Affairs, Prague.

¹⁹⁹ CEOOR, *National Report Belgium*, 2004 and People in Need, *National Report Czech Republic*, 2004, p.2.

4.2. Direct and indirect forms of discrimination

In those Member States where the housing sector is typically owner-based, the opposite usually applies to foreign migrants, who are typically renters. In **Spain**, for example, migrants primarily live in rented dwellings,²⁰¹ and in **Germany** there are many more natives among owners than foreigners.²⁰² In the **United Kingdom**, surveys and monitoring systems show that black and minority households are more likely to be in rented accommodation, less likely to be buying with a mortgage and less likely to own their homes outright than the white population.²⁰³ Of course, it cannot simply be assumed that such patterns are simply a result of discrimination. Nevertheless, there is a good deal of evidence on the operation of direct discrimination in the housing markets of the EU.

4.2.1. Direct discrimination

In almost all 25 EU Member States, certain practices in the housing sector can be categorised as direct forms of discrimination, often openly applied against minority groups, migrants, asylum seekers and refugees.

LIMITED ACCESS TO HOUSING

The restriction of access to housing in the case of certain groups of the population manifests itself in different ways. For example, several examples of discriminatory housing advertisements, using forms of words such as ‘migrants excepted’, ‘no coloureds’ or ‘for nationals only’, were detected in **Germany**,²⁰⁴ **Spain**,²⁰⁵ **Ireland**²⁰⁶ and **Austria**.²⁰⁷

²⁰⁰ Greek Helsinki Monitor, Press release “NY Newsday, Agence Press and Voice of America report on Roma around Athens” (28.04.2004); Amnesty International - Greek Section, Press release “Oi Olympiakoi agones den prepei na odigisoun se apempolisi anthropinon dikaionaton gia chari tis asfaleias” (The Olympic Games must not lead to the non-protection of human rights in the name of security” (12.07.2004); “Piso apo ti vitrina oi oikismoi tis ntropis” (Behind the façade the settlements of shame), in: *Apogemmatini* (19.08.2004); Coulter, C (2004) “Law must help change attitudes to Travellers, conference hears”, in *The Irish Times*, (15.03.2004); Humphreys, J. (2004) “More Travellers being housed, says Minister”, in: *The Irish Times*, (19.03.2004); Holland, K (2003) “Families wait three years for basic facilities”, in: *The Irish Times*, (21.01.2004); Holland, K (2004) “Killiney asylum seekers are rehoused locally”, in: *The Irish Times*, (14.08.2004); Holland, K (2004) “Refugees face discrimination from landlords”, in: *The Irish Times*, (01.03.2004); “Campaign against asylum centre fails”, in: *The Irish Times*, (01.05.01); Melia, P (2004) “Refugees face racism barrier in search for rented housing”, in: *Irish Independent*, (01.03.2004); Khan, F (2004) “‘No Coloured’ ad for house to rent sparks equality watchdog probe”, in: *Irish Independent*, (04.03.2002); Brennan, M (2004) “Foreigners more vulnerable to illegal evictions”, in *Irish Examiner*, (31.03.2004).

²⁰¹ See Instituto Nacional de Estadística (INE), *Population and Housing Census 2001* and University of Barcelona, *Estudi sobre el grau d'integració dels immigrants en la província de Barcelona*.

²⁰² cf. Statistisches Bundesamt 2004a, Table section (Tab. 5.1).

²⁰³ CRE, *National Report U.K.*; 2004, p.3.

²⁰⁴ E.g. Linde, Christian (2002) „Migranten auf den Wohnungsmarkt. Von Integration noch weit entfernt“ in *Mieterschutz*, No.2002 4; available at <http://www.wohnungslos-inberlin.de/texte/ms0204.htm>, (05.10.2004).

Examinations of housing associations' practices identified discrimination in the administration of waiting lists in some Member States. A 'testing' experiment by a newspaper of three different housing associations in **Denmark** in September 2004 showed that in all cases the enquiry that was made with the Danish sounding name was informed of a shorter waiting period, and the response given to this enquiry was more thorough, than in the case of the person with an Arabic-sounding name.²⁰⁸ The discriminatory application of waiting lists by landlords was also reported in **Spain**.²⁰⁹

The refusal to let housing to migrants and minority groups appears to be a common form of direct discrimination. Research on the housing market in **Germany** observed such practices of landlords,²¹⁰ and in **Spain**, a testing exercise in Valencia and Alicante showed that four of the five real estate agencies who were visited were less likely to offer flats to migrants than to the Spanish.²¹¹ As for **Portugal**, numerous NGOs report the rather common practice of using the criteria of accent, skin-colour and nationality when selecting tenants.²¹² In **Finland** cases were identified of municipalities misusing loan funds intended for housing Roma families by offering housing to evicted members of the majority population²¹³ and in **Latvia**, the case of municipal authorities refusing to grant a municipal dwelling to a Roma family was reported.²¹⁴ According to the report from **Malta**, prejudice against North Africans clearly comes into play in the short-term letting of property.²¹⁵ In **Greece**, various agencies and researchers call attention to the fact that some municipal authorities refuse to facilitate the official recording of Roma as members of the municipality, in order to exclude them from housing.²¹⁶

²⁰⁵ S.O.S. Racismo (2004), *Informe anual 2004 sobre el racismo en el Estado español*, Barcelona: Icaria Editorial; in 2003, the Bilbao-based branch (Basque country) registered more than 100 claims for discrimination in housing access.

²⁰⁶ Khan, F (2004) "'No Coloured' ad for house to rent sparks equality watchdog probe", in *Irish Independent*, (04.03.2002).

²⁰⁷ Volkshilfe Österreich, Wohndrehscheibe, Jahresbericht 2003, Wien and *Der Standard* (06.01.2005), "Die strittigsten Themen – Nur für 'Inländer'", available at http://derstandard.at/?id=1908465&_index=8, (07.01.2005).

²⁰⁸ *Urban*, articles from 10th and 11th September 2004.

²⁰⁹ S.O.S. Racismo (2004), *Informe anual 2004 sobre el racismo en el Estado español*, Barcelona: Icaria Editorial; in 2003, the Bilbao-based branch (Basque country) registered more than 100 claims for discrimination in housing access.

²¹⁰ E.g. Leben ohne Rassismus (2003) Antidiskriminierungsarbeit in NRW, p.4, available at www.nrwgegengendiskriminierung.de/de/docs/pdf/broschuere6-7.pdf, (05.10.2004); Wehrhöfer 2002a, Mitteilung des Mieterbundes, available at www.mieterbund.de/zeitungen/mz/2000/0200/starke_stuecke_body.html, (05.10.2004).

²¹¹ Aparicio, Rosa (Dir.) (2003), *Inmigrantes y vivienda en la Comunidad Valenciana*, Valencia: Centro de Estudios para la Integración Social y Formación de Inmigrantes (CEIM); Generalitat Valenciana; Provincia de Aragón de la Compañía de Jesús.

²¹² Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, pp.35, 36.

²¹³ Suonoja, K. & Lindberg, V. (2000), *Strategies of the Policy on Roma*, p.71-73 Helsinki: Ministry of Social Affairs and Health.

²¹⁴ LCHRES, *National Report Latvia*, 2004, p.18.

²¹⁵ JCFJ, *National Report Malta*, 2004, p.20.

²¹⁶ For example, Labour Ministry, ROM Network, NCHR 2003 report.

INAPPROPRIATE HOUSING CONDITIONS AND INFERIOR TERMS OF CONTRACT

Generally it can be observed that it is more usual for foreign nationals and ethnic minorities to live in inferior accommodation in unhygienic conditions with poor infrastructure. Such situations were observed, for example, in **Spain**,²¹⁷ **Ireland**,²¹⁸ **Luxembourg**,²¹⁹ **Portugal**²²⁰ and the **United Kingdom**.²²¹ Member States like **Greece**²²² and **Ireland**²²³ specifically report on overcrowded or sub-standard accommodation for asylum seekers²²⁴ and refugees, and the Irish report refers specifically to inappropriate accommodation for the Traveller community.²²⁵ Low standard housing quality for Roma appears to be present in several Members States, such as **Lithuania**,²²⁶ **Hungary**, **Poland**,²²⁷ **Portugal**,²²⁸ **Slovenia**²²⁹ and **Slovakia**.²³⁰

²¹⁷ Instituto Nacional de Estadística (INE), *Population and Housing Census 2001*.

²¹⁸ Kenna, P and MacNeela, P (2004) *Housing and Refugees: The Real Picture*, Dublin: The Vincentian Refugee Centre.

²¹⁹ Observatoire des mouvements économiques et sociaux de la ville de Luxembourg (1994) *Document de travail No. 3*, Ville de Luxembourg : composition de la population selon la nationalité.

²²⁰ Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, pp.35 and 36.

²²¹ Sellick, P. (2004) *Muslim Housing Experiences*, Sector Study 34, London: Housing Corporation, available at [http://www.housingcorporation.org.uk/HousingCorp.nsf/AllDocuments/15432DA68E04DB0B80256F1E00528C37/\\$FILE/MuslimSS34.pdf](http://www.housingcorporation.org.uk/HousingCorp.nsf/AllDocuments/15432DA68E04DB0B80256F1E00528C37/$FILE/MuslimSS34.pdf), (12.10.2004).

²²² "Kolastirio to kentro... filoxenias prosfygon" in *Eleftherotypia* (17.09.2004).

²²³ Holland, K (2004) "Killiney asylum seekers are rehoused locally", in *The Irish Times*, (14.08.2004).

²²⁴ It should be noted that EU Directive 2003/9 on minimum standards for the reception of asylum seekers was supposed to be implemented only before February 2005, and thus during 2004 Member States were free to regulate the matter themselves.

²²⁵ Holland, K (2003) "Families wait three years for basic facilities", in *The Irish Times*, (21.01.2004).

²²⁶ <http://www.roma.lt>, (10.09.2004); Darbo ir socialinių tyrimų institutas (2001), *Romų gyvenančių Vilniaus miesto laboriose, sociologinis tyrimas*, Open Society Institute (2002), "Monitoring the EU Accession Process" in *Minority Protection* Vol. 1, pp.365-418.

²²⁷ Ministry of Interior and Administration (2003), *Program na rzecz społeczności romskiej w Polsce* available at http://www.mswia.gov.pl/index_a.html, (15.10.2004).

²²⁸ Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, pp.37 and 38.

²²⁹ Joint Memorandum on Social Inclusion of Slovenia, http://www.gov.si/mddsz/pdf/jim_an.pdf, (02.10.2004), p. 36; National Action Plan on Social Inclusion (2004-2006), http://www.gov.si/mddsz/pdf/nap_en_04_06.pdf, (02.10.2004), p. 20; Governmental Commission for the protection of Roma ethnic community, 2nd session, September, 2003, internal material (transcript); Tratar, M. et al. (2003), Report on Measures to Combat Discrimination in the 13 Candidate Countries (VT 2002 47); Country Report Slovenia, p.15, available at: <http://www.migpolgroup.com/uploadstore/SLOVENIAFinalEN.pdf> (24.06.2004); Zupančič, J. (2003) "Roma problems in the light of spatial relations", in: Klopčič, V., Polzer, M. (eds.) *Evropa, Slovenija in Romi: zbornik referatov na mednarodni konferenci v Ljubljani*, 15. februarja 2002, Ljubljana: Institut za narodnostna vprašanja, pp. 112-128; Council of Europe, Office of the Commissioner for Human Rights (2003), Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Slovenia 11 – 14 May 2003, p.6, available at: [http://www.coe.int/T/E/Commissioner_HR/Communication_Unit/CommDH\(2003\)11_E.doc](http://www.coe.int/T/E/Commissioner_HR/Communication_Unit/CommDH(2003)11_E.doc).

²³⁰ NFP Slovakia, *National Report Slovakia*, 2004, pp.24-25.

The imposition of unreasonably high rents on foreign nationals is reported as being a very common practice in many of the Member States. One of the most pressing problems in **Belgium** is that of owners who own shabby property, charge high rents, and allow the property to deteriorate.²³¹ The so-called “rack-renters” who carry out these practices are regularly prosecuted and punished by the authorities. In **Germany** the average rent for foreigners is generally higher than for natives,²³² and in **Spain**²³³ and the **Czech Republic**²³⁴ migrants and minorities face similar situations. As foreigners are not eligible for social housing in **Slovenia**, they have to find accommodation on the private market, where they are often confronted with exploitative rents.²³⁵

The application of unacceptable terms of contract for foreign nationals has been detected in **Austria**, where the practice of illegal reimbursements of deposits was observed²³⁶ as well as the practice of renting out flats to migrants only on limited terms of contract.²³⁷ The **Portuguese** report describes unreasonable conditions for selling or renting a house, such as demanding an excessive amount of advance deposit, the refusal to accept guarantors, or requiring excessive and unnecessary documentation.²³⁸ Paying rent without a contract was described in **Slovenia** as occurring mainly among the foreign population.²³⁹

SEGREGATION

In the housing sector, the phenomenon of segregation can be seen to be a consequence of a combination of factors, including structural barriers to housing facilities, such as economic hurdles, and direct and indirect discrimination, and a preference on the part of some minority and migrant groups to settle down among themselves in order to enhance community facilities and mutual support in a potentially hostile environment.

In the city of Barcelona, **Spain**, a high territorial segregation of Maghrebian migrants can be observed.²⁴⁰ In the **Netherlands** ethnic minorities are concentrated in large cities such as Rotterdam, The Hague, Amsterdam and Utrecht. Whilst there

²³¹ CEOOR, *National Report Belgium*, 2004, p.21.

²³² E.g. Bremer, P. (2000) Ausgrenzungsprozesse und die Spaltung der Städte. Zur Lebenssituation von Migranten, Opladen: Leske + Budrich. p.160-161.

²³³ E.g. Sodepau; Federació d'Associacions de Veïns i Veïnes de Barcelona (2003), *Informe sobre discriminació a la població immigrada en l'accés a l'habitatge de lloguer a Barcelona* available at <http://www.sodepau.org>, (21.05.2004).

²³⁴ People in Need, *National Report Czech Republic*, 2004, p.20.

²³⁵ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p.32.

²³⁶ Interview of lawyer with a Tenants' Association, conducted by the Austrian NFP, (29.07.2003).

²³⁷ Volkshilfe Österreich, Wohndrehscheibe, Jahresbericht 2003, Wien, <http://www.volkshilfe.at/>, pp. 46-47.

²³⁸ Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.36

²³⁹ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p.32.

²⁴⁰ E.g. Martori, J.C.; Hoberg, K. (2004), “La segregación residencial com a eina d'estudi de la població immigrant”, in Aja, E.; Nadal, M. (Dirs.), *La immigració a Catalunya avui Anuari 2003*, Barcelona: Fundació Jaume Bofill, Editorial Mediterrània.

is some degree of segregation in Rotterdam and in The Hague, in general ethnic segregation is not as extreme as in other countries.²⁴¹ In **Portugal** the concentration of ethnic minorities in and around Lisbon started with the decolonisation of the PALOP²⁴² and still exists to varying extents.²⁴³ **Sweden** is a country with one of the highest indices of ethnic segregation in cities.²⁴⁴ Also in **Cyprus** the NFP reports evidence that there are areas which are inhabited almost exclusively by poor migrants and other marginalised minorities.²⁴⁵

Territorial segregation is particularly acute for the Roma population, such as in the **Czech Republic**,²⁴⁶ **Spain**²⁴⁷ and **Hungary**.²⁴⁸ In Budapest, for example, the most numerous Roma populations can be found in the VIIIth district, which is emerging as an 'ethnic ghetto'.²⁴⁹ Also in **Lithuania**,²⁵⁰ **Slovenia**,²⁵¹ and **Slovakia**²⁵² segregation is generally the norm for the Roma community.

4.2.2. Indirect discrimination

Indirect discrimination in the housing sector occurs when access to housing is made dependent on, for example, the nationality, duration of residence, financial status and economic situation of the applicant.

In the **Czech Republic**,²⁵³ **Denmark**,²⁵⁴ **Lithuania**,²⁵⁵ **Austria**²⁵⁶ and **Slovenia**²⁵⁷ cases of indirect discrimination, using the nationality of the applicant, were identified regarding, for example, access to such things as non-profit rental housing programmes, mortgages, low-interest housing fund loans and rent subsidies.

²⁴¹ Weijers, Y.M.R. et al (2002) "De kleur van beleid, De invloed van het grotestedenbeleid op de sociaal- economische positie en de leefomgeving van etnische minderheden", Rotterdam: Institute for Sociological- Economic Research (ISEO), pp. 53-67.

²⁴² Portuguese-speaking African countries.

²⁴³ Fonseca, L. Et al. (2002), Immigrants in Lisbon. Routes of integration, Centro de Estudos Geográficos, Estudos para o planeamento Regional e Urbano Nº56, Lisboa, Universidade de Lisboa.

²⁴⁴ OECD – Territorial Development (1998), *Integrating Distressed Urban Areas*, Paris: OECD.

²⁴⁵ INEK-PEO, *National Report Cyprus*, 2004, p.43.

²⁴⁶ People in Need, *National Report Czech Republic*, 2004, p.19.

²⁴⁷ MPDL, *National Report Spain*, 2004, pp.55.

²⁴⁸ Ladányi, J-Szelényi, I (1997) "Szuburbanizáció és gettósodás", in: *Kritika* No. 7, pp.4-12.

²⁴⁹ Ladányi, J. (1992) "Gondolatok a Középső - Józsefváros rehabilitációjának társadalmi összefüggéseiről", in: *Tér és Társadalom*, Vol.6, No. 3-4, pp.75-89.

²⁵⁰ E.g. <http://www.roma.lt> (10.09.2004); Darbo ir socialinių tyrimų institutas (2001). *Romų gyvenamųjų Vilniaus miesto taboruose, sociologinis tyrimas*.

²⁵¹ Petković, B. (2004) Ne le sosedge, tudi najboljši sosedi ne mara Romov", in: Poročilo skupine za spremljanje nestrpnosti, no. 3, pp. 70-81.

²⁵² NPF Slovakia, *National Report Slovakia*, 2004, pp.24-25.

²⁵³ People in Need, *National Report Czech Republic*, 2004, p.20.

²⁵⁴ <http://www.klagekomite.dk ?ID=276&AFD=0>, (01.11.2004).

²⁵⁵ ISR, *National Report Lithuania*, 2004, p.34.

²⁵⁶ Der Standard (13.07.2004) "Gemeindebau weiter nicht für alle offen", p. 9; Volkshilfe Österreich, Wohndrehscheibe, Jahresbericht 2003, Wien, soon available on the web at: <http://www.volkshilfe.at>, p. 44.

²⁵⁷ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p.32.

Furthermore the requirement of a prior minimum period of residence in order to be eligible for public residential housing can constitute an indirect form of discrimination. In **Italy**, for example, the regions of Lombardia and Veneto require from applicants a residence of several years within the region.²⁵⁸ Also in **Sweden**, the period of residence plays a role regarding restrictions to housing access of immigrants.²⁵⁹

Provisions which refer to the economic situation of applicants in the allocation of apartments can be considered as another form of indirect discrimination, as members of minority groups or migrants are generally more vulnerable to economic problems and unemployment. One example is given by cities in the **Netherlands** with areas of ethnic concentration, in which a new form of distribution by means of income requirements takes place. For example, the City Council of Rotterdam decided that a person must have an income of at least 120 per cent of the minimum wage to be permitted to live in Rotterdam.²⁶⁰ Similarly, the requirement of security bonds and guarantors can be seen to constitute another form of indirect discrimination, as revealed in **France** as a common practice in the neighbourhoods of Paris and Lyon.²⁶¹

In **Germany** the practice was reported of applying secret unofficial quotas in social and private housing, in order not to exceed a certain percentage of foreign tenants and maintain an ethnically balanced neighbourhood.²⁶²

4.3. Social groups most vulnerable to racism and discrimination IN HOUSING

Across the 25 EU Member States, minority groups, migrants, refugees and asylum seekers are the groups most likely to be affected by discrimination in the sector of housing. The Roma can be identified as the most vulnerable ethnic minority group in many states of the EU. Generally, the housing situation of the Roma appears acutely problematic in access to housing, and regarding housing conditions and segregation. Roma are mentioned as the group most likely to suffer from discrimination in the **Czech Republic, Latvia, Lithuania, Hungary, Poland, Slovenia, Slovakia** and **Finland**, and to a smaller extent in **Greece, Spain**,

²⁵⁸ Lombardia / Regional Regulations no.0001, (03.02.2004), Annex no. 1, p.11: COSPE, *National Report Italy*, 2004, p.36.

²⁵⁹ Andersson, R and I. Molina (2003) "Racialization and Migration in Urban Segregation Processes. Key issues for critical geographers" in Öhman, Jan & Simonsen, Kirsten (eds.) *Voices from the North - New Trends in Nordic Human Geography*, Ashgate.

²⁶⁰ Weijers, Y.M.R. et al. (2002) *De kleur van beleid, De invloed van het grotestedenbeleid op de sociaal-economische positie en de leefomgeving van etnische minderheden*, Rotterdam: Institute for Sociological-Economic Research (ISEO), p.6.

²⁶¹ Chignier Riboulon F. dir., Belmessous F. et H., Chebbah-Malicet L., *Les discriminations quant à l'accès au logement locatif privé des catégories sociales étrangères ou perçues comme étrangères: une étude à partir des quartiers Lyonnais et Parisiens*, Laboratoire de recherche CERAMAC Université Blaise Pascal de Clermont Ferrand, 2003, p.155.

²⁶² *Ausländer in Deutschland (AiD)/Integration in Deutschland*, Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 19, No. 2003/2.

Cyprus, Portugal and Sweden. In **Ireland** the Traveller community is exposed to discrimination in the housing sector, and in some states, such as **Finland** and **Poland**, citizens from the former Soviet Union and Russian speaking minorities can suffer disparities in housing conditions. In **Cyprus**, the Turkish-Cypriot minority is reported to be in a less favorable position.²⁶³

With regard to migrants, in **Belgium** it is Moroccans, Turks and people from sub-Saharan Africa who are more likely to be exposed to discrimination, whilst in **Germany**, it is asylum seekers, “Spätaussiedler”²⁶⁴ and Turkish people. As for **Greece**, regular immigrants in theory enjoy equal treatment with Greek citizens as far as their formal access to social security rights, goes. However, immigrants of Greek ethnic origin, the “repatriated” immigrants from ex-USSR countries, enjoy preferential treatment in comparison to other immigrant social groups with regard to low- or free-interest loans, or special housing programmes. (However, there is an exception within this category, between the “repatriated” and those from Albania, as the latter are not entitled to the favourable provisions and special policies.) In **Spain**, Maghrebians, Asians and black migrants are the most vulnerable groups. In **Ireland** asylum seekers are reported as facing discrimination and in **Luxembourg** black people represent the most vulnerable group. As for **Austria**, migrants from sub-Saharan Africa (especially Nigerians), from Eastern Europe, former Yugoslavia and Turkey are reported as most vulnerable to discrimination.

Particularly worthy of attention in this context are the so-called “erased” in **Slovenia**. The “erased” is a popular name for a group of over 18,000 persons, registered as citizens of one of the other former-Yugoslav republics, whose data were erased from the register of permanent residents in 1992 without the required administrative procedure. As a result, they lost their permanent residence permits and associated rights and benefits, and were consequently denied the right to buy the apartments in which they were living,²⁶⁵ and to buy and sell property in general.

4.4. Significant cases concerning racism and discrimination in 2004

In 2004, Roma settlements around Athens, **Greece**, faced evictions and problems deriving from their removal from sites near the Olympic venues. The UN Committee on Economic, Social and Cultural Rights expressed its grave concern about numerous reports on the extrajudicial demolition of dwellings and forced evictions of Roma, often justified by the authorities as necessary to allow construction projects for the 2004 Olympic Games, and sidestepping rather complex legal arguments regarding the “squatters rights” (*chrisiktisia*) of the

²⁶³ INEK-PEO, *National Report Cyprus*, 2004.

²⁶⁴ Ethnic German immigrants, who originate from the territories of the former Soviet Union.

²⁶⁵ These were apartments that were publicly owned before the change of regime, and which were made available for existing tenants to buy cheaply.

Roma. It was argued that these were frequently carried out without adequate compensation or provision of adequate alternative housing.²⁶⁶

In **Ireland**, the media and the National Consultative Committee on Racism and Interculturalism reported the Dublin City Council blocking a lane, the primary access route for 400 members of the Traveller community, with concrete barriers, following concerns regarding illegal dumping. The incident resulted in disturbances to local traffic and demonstrations until a compromise was reached between representatives of the Traveller community and the Dublin City Council.²⁶⁷

The Lombardy regional government in **Italy** introduced a rating system that assigns specified points to certain conditions of the applicants. As stated earlier, one of such conditions was the number of years of prior residence in the region. This new regulation was challenged before the Regional Administrative Tribunal as being illegitimate, because it discriminated against Italian citizens from other regions of the country.²⁶⁸

In **Cyprus** a Turkish-Cypriot had been forced to abandon his property in the Republic-controlled South in 1974 as part of the forceful movements of population exercised at the time. Since then, the Minister of Interior has been administering all the properties belonging to Turkish-Cypriots. In the following period, the applicant's property was permitted to be used for housing by Greek-Cypriot refugees. Due to the partial lifting of restrictions in movement, the Turkish-Cypriot returned and settled in the south, residing in rented accommodation. His initial application to the Minister of Interior for reinstatement of his property was rejected on the grounds that the ministerial administration continues until the final settlement of the Cyprus problem. However, his subsequent complaint to the Supreme Court was successful and his property was reinstated.²⁶⁹

A special case was identified in the **Czech Republic**, when the Administration for Refugee Facilities (SUZ) started removing electricity sockets from the rooms of asylum-seekers settled in residence centres, motivated - in the words of SUZ - by "care for the health and safety of the inhabitants, particularly the children". Despite the outraged reaction of asylum-seekers and NGO workers, the administration has not changed its policy.²⁷⁰

In **Hungary**, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities drew attention to the case of the local government in 'Ö. Village',²⁷¹ Pest County, which had purchased a building sheltering mainly Roma without any legal title. After purchasing the building, the local government decided

²⁶⁶ UN Committee on Economic, Social and Cultural Rights, *Final Conclusions on the Initial Report of Greece* (14.05.2004).

²⁶⁷ NFP Ireland, *National Report Ireland*, 2004, p.7.

²⁶⁸ Lombardia / Regional Regulations no.0001, (03.02.2004), Annex no. 1, p.11.

²⁶⁹ Supreme Court of Cyprus Case no.125/2004.

²⁷⁰ People in Need, *National Report Czech Republic*, 2004, p.20.

²⁷¹ an abbreviation used to disguise the name

to demolish it because of its condition, forcing the tenants had to move out of the building, without giving them any alternatives to settle elsewhere.²⁷²

As a continuation of its actions to combat the drug trade in the Roma settlement in Kirtimai, **Lithuania**, the Vilnius Municipality demolished six buildings in the settlement. Representatives of the municipality explained that the actions were necessary to prevent the expansion of the drug production and trade, and noted that the demolished buildings were built illegally.²⁷³ Following criticisms, the demolition was stopped.²⁷⁴

In **Slovenia**, the earlier reported issue of “the erased”²⁷⁵ was still a long way from being resolved by the end of 2004. Even though the Ministry of the Interior made a commitment to complete the process of issuing written orders of permanent residence to the erased individuals, many fundamental issues remain unanswered, such as the question of the burden of proof of actual residency and the issue of restitution of damages.²⁷⁶

4.5. Preventive initiatives, good practice and programmes of awareness raising

4.5.1. National and local governmental organisations

The programme “Prologuer” (Pro-renting) in **Spain**, which was launched by the Catalan government, is intended to buy empty flats, to restore them when necessary, and to rent them in cases where flat owners wish to retain their ownership. Moreover it provides mediation between tenants and landlords in order to ensure the payment of rent and the return of flats in perfect conditions once rental agreements have expired.²⁷⁷ Although this programme is not specifically

²⁷² CMRS, *National Report Hungary*, 2004, p.31.

²⁷³ BNS (2004), Romų tabore Vilniuje pradedami griauti nelegalūs statiniai, OMNI Laikas (02.12.2004), available at [http://www.omni.lt/?i\\$9359_16014Sz_233317](http://www.omni.lt/?i$9359_16014Sz_233317), (13.01.2005).

²⁷⁴ Leončikas T. (2004) “Kodėl turi rūpėti griaujami čigonų namai”, in: OMNI Laikas, (06.12.2004), available at http://www.omni.lt/index.php?base/z_234411, (06.01.2005), TV programme Visuomenės interesas on Lithuanian National Television (LTV) on 06.12.2004 and Press release of the Seimas Ombudsmen’s Office: Seimo kontrolierė sustabdė pastatų griovimą čigonų tabore.

²⁷⁵ See Section 4.3.

²⁷⁶ Zorn, J. (2003) “The Politics of Exclusion during the Formation of the Slovenian State”, in: Dedič, J., Jalušič, V., Zorn, J. *The Erased: Organized Innocence and the Politics of Exclusion*, Ljubljana: Peace Institute, pp. 147-148; Zakon o izvršitvi 8. točke odločbe Ustavnega sodišča Republike Slovenije št. U-I-246/02-28, Official Gazette of the Republic of Slovenia no.38/2004; the law was not implemented, therefore it does not have a legal number; See: ECRI (2003), Second Report on Slovenia: Council of Europe, Office of the Commissioner for Human Rights (2003), Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Slovenia 11 - 14 May 2003, Bureau of Democracy, Human Rights, and Labor (2004), Slovenia – Country Reports on Human Rights Practices 2003; <http://www.varuh-rs.si/slike/datoteke/att/pp-izbrisani-junij2004.vsebina.pdf>, (20.09.2004).

²⁷⁷ Programa Prologuer, available at <http://www.adigsa.org> and <http://www.gencat.net/ptop>.

targeted at foreign migrants, in practice it assists migrants and other groups who experience discrimination.

Furthermore, the Catalan Government created the so-called “Red Bolsa de Vivienda Social” (Network of Social Housing) which aims to encourage access to decent housing by all social groups encountering difficulties in this field, by involving both parties, providing technical and legal guarantees, a comprehensive insurance policy and a guarantee for six months at most. This initiative explicitly mentions foreign migrants who are in an advanced ‘pre-legalisation’ condition.²⁷⁸

Some exceptions to the exclusion of third country nationals from council housing are mentioned in **Austria**. The city of Salzburg allocates flats in this housing segment to foreign nationals, proportionate to their share in the overall population²⁷⁹ and the towns of Krems and Guntramsdorf allocate communal flats and flats owned by co-operatives irrespective of the prospective tenant’s citizenship.²⁸⁰ The counselling organisation “Wohndrehscheibe” in Vienna, which works to improve housing access for refugees and migrants in lower income brackets, was listed in 2004 among the 107 “best practices” within the framework of the Dubai International Award.²⁸¹

The National Action Plan 2003-2005 of **Finland** states that one of the three strategic goals of its housing policy is to preserve the social balance in housing districts while diversifying their resident structure.²⁸² The government also introduced a draft law for parliament according to which municipal authorities would be entitled to financial support when building, acquiring land or making improvements to housing for special needs groups.²⁸³

In the **Czech Republic**, the Ministry for Regional Development conducts the “Program výstavby podporovaných bytů”, (Programme for Construction of Supported Housing). The terms of the programme require municipalities to support not only the construction of new houses but also to provide them with social services, thus supporting groups endangered by social exclusion.²⁸⁴ The programme has to fight against the fact that most municipalities and mayors are actively against the idea of building houses for Roma.

²⁷⁸ Red Bolsa de Vivienda Social, available at: <http://www.caritasbcn.org/CAT/habitatgesocial/BorsaSocialHaitatgesLloguer.html>, (03.09.2004).

²⁷⁹ Information by the head of the unit for the allocation of dwellings in the city of Salzburg, (12.09.2003).

²⁸⁰ Integrationsleitbild der Stadt Krems mit Maßnahmenplan, pp. 6-8.

²⁸¹ <http://www.blpnet.org/awards/awards16b.htm> and database at <http://database.bestpractices.org/>.

²⁸² Finland, Ministry of Social Affairs and Health (2003) *National Action Plan against Poverty and Social Exclusion for 2003-2005*, p. 24. Helsinki: Ministry of Social Affairs and Health available at <http://pre20031103.stm.fi/english/tao/publicat/national03/entr23.pdf>, (29.11.2004) and Finnish League for Human Rights, *National Report Finland*, 2004, p.44.

²⁸³ Finland, HE 170/20042 Draft Law on Support For Improving the Housing Conditions of Special Needs Groups (14.09.2004).

²⁸⁴ People in Need, *National Report Czech Republic*, 2004, p.21.

In **Hungary**, the government adopted a middle-term action programme for the social integration of Roma. Regarding the housing sector, the main aim of the programme is to eliminate ‘Roma ghettos’. Their aim is to improve the housing conditions of Roma households whilst simultaneously advancing their social integration. The local government and local minority government of Ózd, for example, have started a programme to renovate an area of serious physical deterioration and social problems. In this process, residents remain in their flats and take part in the renovation. Whilst in this case the programme in effect maintains the existing segregation, it was regarded as the only solution to improve the housing conditions of the Roma, as there had been negative experiences and an increase of social tension in previous cases of de-segregation.²⁸⁵

The program of developing social flats implemented by the Ministry of Construction and Regional Development in **Slovakia** serves a good example of tackling the housing problems of marginalised population groups.²⁸⁶ Another initiative by the government is the “Long-term Conception of Housing for Marginalised Groups of Citizens and Model of its Financing”, which is intended to create a framework for addressing the problem of housing of marginalised groups, especially the Roma. An important aim is to build a vertical system of social housing, which should consist of several qualitatively different levels of housing. The quality of housing will depend on the expressed goodwill of the citizens to cooperate in the process of construction.²⁸⁷

Pursuant to the National Housing Programme,²⁸⁸ the Housing Fund of the Republic of **Slovenia** published the “Programme of stimulating the assurance of non-profit rental housing in municipalities for 2005.” It contains a public invitation to municipalities to build and renovate non-profit rental housing, and address the housing needs of the Roma population. According to the document, a contractor has to provide members of the Roma community with a permanent solution to their housing problem and to improve, at the same time, the housing conditions of the non-Roma population living in the vicinity of temporary Roma settlements.²⁸⁹

4.5.2. Non-governmental organisations

Since 1997 the Dortmund “Planerladen” in **Germany** implements the “Anti-discrimination project in the area of housing.” Particular significance within the project is given to the neighbourhood fora, which are supposed to contribute to the establishment of small-scale intercultural dialogue in districts. Such

²⁸⁵ CMRS, *National Report Hungary*, 2004, p.33-34.

²⁸⁶ Slovakia, Government of the Slovak Republic (2004) Vyhodnotenie Základných téz koncepcie politiky vlády SR v integrácii rómskych komunit za rok 2003 a Priority vlády SR v integrácii rómskych komunit na rok 2004, p. 35.

²⁸⁷ NPF Slovakia, *National Report Slovakia*, 2004.

²⁸⁸ *Nacionalni stanovanjski program*, Official Gazette of the Republic of Slovenia 43/2000.

²⁸⁹ *Stanovanjski sklad Republike Slovenije* (2004). *Program spodbujanja zagotavljanja neprofitnih najemnih stanovanj v občinah za leto 2005*, Official Gazette of the Republic of Slovenia 112 2004.

institutionalised neighbourhood meetings are already quite common in many cities.²⁹⁰ The Munich project “Active together in Neuperlach” (ZAK) establishes “residents’ gardens”, sites of communal activity between Germans and migrants living in the neighbourhood, which serve as a place of informal integration and communication between people of different social, national or ethnic background.²⁹¹

A further successful example of good practice from the housing sector is the Hanover project “Habitat: International Living in Kronsberg.” People who were interested had to make an application and fill out a questionnaire, which asked about their willingness to work for mutual tolerance and an international neighbourhood. Furthermore, a clause was added to the rental contract, which, as a precautionary measure, made racist behaviour and harassment of neighbours a reason for the termination of the contract.²⁹²

In **Spain**, the Catalan organisation “SER.GI” started a pilot project called “Hàbitat” aimed at buying and restoring empty flats and renting them solely to foreign migrants.²⁹³

Amongst examples of good practice in the **United Kingdom** are the actions of the Refugee Housing Association which, for example, in Leicester helped to stage a “fun day” with estate residents to highlight what they needed to integrate into the community. The findings were used to support successful bids for neighbourhood renewal funding.²⁹⁴

4.5.3. Joint initiatives

In Gent, **Belgium**, a non-discrimination declaration for housing was signed by different private and public parties in the housing sector. In this declaration the signatories committed themselves not to discriminate against persons, groups or communities on the grounds of ‘race’, colour of skin, descent, origin or nationality. An evaluation of this initiative pointed out that the declaration fulfilled a sensitising role both for tenants and for proprietors. However, it seemed that it also made the proprietors aware of the grounds for refusal liable to penalisation and consequently, some proprietors disguised their refusals more effectively.²⁹⁵

In **Germany**, the City of Nuremberg hosted in December 2004 the Fourth European Conference “Cities against Racism in Europe”. By the end of the conference, the participants agreed on a finalised ten-point plan of action. It was suggested to draw up legal normative instruments such as an ethical charter and a code of practice for public and private bodies involved in renting and selling

²⁹⁰ www.planerladen.de/fset_projekte.html, (05.10.2004).

²⁹¹ <http://www.zak-neuperlach.de/pages/info/info.htm>, (05.10.2004).

²⁹² Hansen, P. (2003) Habitat – Ein Beispiel für internationales Stadtleben, p.1 available at <http://www.stadtteilarbeit.de/Seiten/Projekte/hannover/habitat.htm>, (05.10.2004).

²⁹³ Proyecto Hábitat, available at <http://www.fundaciosergi.org/habitatge.htm>.

²⁹⁴ Blackaby, B (2004) *Community cohesion and housing: A good practice guide*, Coventry: Chartered Institute of Housing.

²⁹⁵ CEOOR, *National Report Belgium*, 2004; p.22-23.

accommodation in order to combat discrimination in access to housing, and granting incentives to owners and estate agents who commit themselves to the municipal anti-discrimination code of practice.²⁹⁶

In **Italy**, the Fondazione “La Casa - ONLUS” in Padova, which is set up as a cooperation of governmental and non-governmental actors, provides migrant workers and their families with houses that need to be renovated or that are being built, facilitates housing integration through training, and supports migrant tenants in managing relationships with landlords. The Cooperative “La Casa per gli Extracomunitari” in Verona offers similar services and furthermore assists migrants in transactions, and in their participation in relevant public fora where housing sector policies are discussed.²⁹⁷

²⁹⁶ UNESCO (2004a) *International Coalition of Cities against Racism*, available at http://portal.unesco.org/shs/en/ev.php-URL_ID=3061&URL_DO=DO_TOPIC&URL_SECTION=201.html, (22.12.2004).

²⁹⁷ COSPE, *National Report Italy*, 2004, p.37.

5. Racism and discrimination in the education sector and initiatives on how to prevent it

This chapter examines the indicators for, and the available information on, racism and discrimination in the education sphere, and the social groups most affected. It selects several themes of particular interest, including the issue of segregation, especially regarding the Roma, the issues of religious symbols and faith schools, and examples of good practice against discrimination and segregation, along with positive initiatives for awareness-raising.

5.1. Direct and indirect indicators of racism and discrimination

Direct indicators of discrimination in education focus on individual acts and institutional practices of a racist and xenophobic character. This includes: racist violence, unequal treatment, verbalised prejudice, or harassment based on students' and educators' ethnicity, culture or nationality. It also includes forms of segregation, exclusion, and limited access to educational institutions.

Indirect indicators of discrimination are those which allow a reasonable supposition to be made that members of a group are experiencing unequal treatment and inequalities based on their ethnicity, culture or nationality. A main indicator may be the educational underachievement of ethnic or national groups, i.e. lower school leaving credentials, overrepresentation in schools with lower academic demands, overrepresentation in special education, or disproportional early dropout and expulsion rates.

5.2. Racism, discrimination, and inequality in education - data analysis

Overall it can be said that most EU Member States lack systematic recording of racist and discriminatory incidents in the field of education. Therefore, in many countries only a few cases of direct discrimination, racism and xenophobia, concerning students, teachers, and parents, are documented and publicly accessible. However, data on discrimination not only deals with direct racial discrimination. The registries of anti-discrimination agencies and other authorities that handle complaints mostly contain a broader stock of discriminatory incidents.

In several countries, NGOs register cases based on reports made by individuals or organisations. For example, in **Austria**, the NGO ZARA lists six cases concerning education in its racism report 2003.²⁹⁸ They include racist abuse against pupils by other pupils, as well as the example of a conflict between a Muslim girl and a teacher related to a headscarf.

In some Member States reports are made to the School Inspection Agency or the Ministry of Education. In the federal state of Brandenburg, **Germany**, incidents with an extreme right-wing background are reported to the state school board (*Schulamt*).²⁹⁹ The number of reported incidents with an extreme right-wing background at schools in Brandenburg dropped from 179 for the school year 2001/02 to 117 in the school year 2002/03.³⁰⁰ In the statistics of the School Administration of Berlin, 39 extreme right-wing incidents were registered for the school year 2003/04,³⁰¹ which constitutes 13 more than in the previous year. Eleven of the 39 registered incidents were categorised as motivated by antisemitism; three had a xenophobic background. Over 80 per cent of the right-wing extremist incidents were propaganda crimes. In three cases bodily injuries were registered.

In **France**, in 2001, the National Ministry of Education implemented the software 'SIGNA' in all elementary and secondary state schools. It is intended as a tool for collecting data on serious acts of violence that take place in state schools and institutions. The software's criteria permit acts to be reported that are qualified as criminal, as acts reported to the police, and as acts which create a stir in the school community. Since January 2004, the racist or antisemitic motivation of each single act can be monitored. In the first semester of 2004, 1040 racist acts and 235 antisemitic acts were recorded in state secondary schools and colleges.

Among other official bodies collecting or publishing data on racism and discrimination in education are the Commission for Racial Equality (England, Scotland and Wales), the Equality Commission (Northern Ireland), the Equality Authority (Ireland), the Commission for Equality and against Racial Discrimination (Portugal), the Equal Treatment Commission (the Netherlands), the Ombudsman for Minorities (Finland) and the Ombudsman against Ethnic Discrimination (Sweden).

For example, in **Ireland**, in 2003, the casework activity of the Equality Authority included twelve cases relating to education under the grounds of 'race', and sixteen cases relating to education and the Traveller community. In the **Netherlands**, in 2003, the Equal Treatment Commission (CGB) gave nine education-related

²⁹⁸ ZARA, Racism Report 2003, available at: <http://www.zara.or.at/materialien/rassismus-report-racism-report-2003.pdf> (30.09.2004), cases nr. 11, 22, 148, 155, 156, 170.

²⁹⁹ Cf. Brandenburg, Ministerium für Bildung, Jugend und Sport (2001) Rundschreiben 03/01 vom 16. Januar 2001: Ordnungsrechtliche Grundsätze zum schulischen Konzept gegen Gewalt, Rechtsextremismus u. Fremdenfeindlichkeit, p. 6.

³⁰⁰ Cf. Gorcholt, M. (2004) "Die Aufgaben der Schule in Umbruchsituationen", in: Deutsch-Russischer Austausch e.V. (ed.) Macht Demokratie Schule – macht Schule Demokratie?, Berlin, p. 7.

³⁰¹ Berlin, Senatsverwaltung für Bildung, Jugend und Sport (2004) *Gewaltsignale an Berliner Schulen 2003 2004*, p. 15.

opinions. The CGB decided on four occasions that direct or indirect discrimination had been made based on 'race' or religion. In one of the opinions a Christian primary school was found to have committed direct discrimination on the grounds of 'race' with its admittance policy for students from the Sinti and Roma community. By September 2004, four opinions involving education had been pronounced. In **Sweden**, in 2003, the Ombudsman against Ethnic Discrimination (DO) received 14 complaints with regard to discrimination at universities and institutions for higher education, and 25 reports with regard to discrimination in schools and other educational institutions. Similarly in 2004, the DO received 14 complaints regarding ethnic discrimination at universities and institutions for higher education, and 26 complaints with regard to discrimination at other educational institutions.

Another source of information is research studies on racism and discrimination in education. For example, in July 2004, a research report published by the Department for Education and Skills (DfES) into the educational needs of mixed heritage pupils in the **UK** indicated that some pupils of White/Black Caribbean origin experience name-calling and forms of discrimination targeted at their mixed heritage from both their White and Black peers.³⁰²

The representative study "Viele Welten leben",³⁰³ commissioned by the **German** Federal Ministry for Family, Elderly, Women and Youth (BMFSFJ), assessed the experiences in the educational system of 950 unmarried female migrants, between the ages of 15 and 21, with a Greek, Italian, former Yugoslavian, Turkish or ethnic German (Spätaussiedler) background. Twenty-two per cent of the interviewees (N=210) stated that they have experienced "worse treatment at school and/or in the vocational training due to their origin". In particular, interviewees with an ethnic German background reported discriminatory treatment (39 per cent), followed by interviewees with a Turkish background (24 per cent).³⁰⁴

In **Ireland**, the Institute for Public Administration published a study of equality in primary education. The study, based on interviews with 132 pupils, found that there is a serious problem of racism and stereotyping in primary schools.³⁰⁵

Aside from data reported by official bodies and other institutions, during 2004, there have been several reports in the press concerning incidents of racial harassment and racially motivated violence. For example, in the **United Kingdom** it was reported that figures released by Glasgow City Council, in April 2004, reveal that racial harassment has increased in schools in Glasgow for the seventh

³⁰² Tikly, L. et al (2004) *Understanding the Educational Needs of Mixed Heritage Pupils*, London: Department for Education and Skills, available at http://www.ligali.org/resource/dfes_mixedheritage.pdf, (12.10.2004).

³⁰³ Germany, BMFSFJ (2004) *Viele Welten leben. Lebenslagen von Mädchen und jungen Frauen mit griechischem, italienischem, jugoslawischen, türkischen und Aussiedlerhintergrund*. Berlin: BMFSFJ, p. 51.

³⁰⁴ BMFSFJ 2004, pp. 259-161.

³⁰⁵ Deegan et al. (eds, 2005) *Primary Voices - Equality, Diversity and Childhood in Irish Primary Schools*, Dublin: Institute for Public Administration.

year in a row. Physical assaults increased from 18 to 29 between 2002 and 2003.³⁰⁶ In August 2004, Plymouth Council was criticised for doing too little to tackle racist incidents in schools. Fifty racist incidents were reported in Plymouth schools over twelve months.³⁰⁷ Also, in September, a report into the educational experiences and achievements of Black boys in London schools, indicated that many boys were experiencing racism in varying forms in school, and were receiving little support in addressing this.³⁰⁸

5.3. Vulnerable social groups in education

As in previous years, data on the educational attainment of migrants and ethnic minorities indicates an overrepresentation of several ethnic minority groups in schools with lower academic demands and lower school leaving credentials. In many EU Member States, the Roma/Sinti/Gypsies/Travellers group constitutes the most vulnerable group in education. The national reports show the Roma's general low educational attainment, high levels of illiteracy, school segregation, and exclusion from education. Reports on non-migrant minority groups in the EU Member States highlight a disadvantaged situation and underachievement in education for other groups, such as Travellers in Ireland or the Muslim minority in Greece. Since the Baltic States restored their statehood after the collapse of the Soviet Union in 1991, policy changes in education have produced a more difficult situation for the Russian minority in Estonia and Latvia.

Children of migrants, such as those from the former Yugoslavia (e.g. Austria, Germany, Luxembourg), and Turkey (e.g. Austria, Germany), but also migrants of EU Member States (e.g. Italians in Germany, or Portuguese in Luxembourg), are less likely to reach higher educational levels in these respective countries. The same applies to pupils of mixed White and Black-Caribbean heritage and Bangladeshi and Pakistani pupils in the United Kingdom. The disadvantaged position in education of pupils with a migrant background can also be seen in the results of the OECD PISA study 2003,³⁰⁹ published in December 2004. In general, this holds true even for those students whose parents are foreign born but who themselves have grown up in the reception country and have spent their entire school career there. Furthermore, in many countries, asylum seekers, refugees, and undocumented immigrants are affected by discrimination and disadvantages in education.

³⁰⁶ Braiden, G. (2004) *Rise in racist incidents at city schools*. The eveningtimesonline, available at <http://www.eveningtimes.co.uk/hi/news/5025711.html> (12.10.2004).

³⁰⁷ This is Plymouth (25.08.2004) *School Race Incident Rate*, available at <http://www.thisisplymouth.co.uk/displayNode.jsp?nodeId=133464&command=displayContent&sourceNode=133158&contentPK=10829300> (12.10.2004).

³⁰⁸ Education Commission, London Development Agency (2004) *The educational experiences and achievements of Black boys in London schools 2000 - 2003*, p. 7 London: Education Commission, available at

http://www.lda.gov.uk/server.php?show=ConWebDoc_568, (12.10.2004).

³⁰⁹ <http://www.pisa.oecd.org> (20.2.2005).

5.4. Inequalities and segregation

While it is often difficult to assess whether differences in educational attainment of various ethnic groups can be traced back to discrimination or whether they are caused by other factors, such as different social backgrounds, or language and cultural differences, some indicators point more clearly to the possibility of discriminatory practices. Among the predominant issues are segregation and overrepresentation in special education. These two topics are frequently mentioned in the NFP annual reports of both the new and old Member States.

Different types of segregation can be discerned: (1) Intra-school segregation, which is caused by organising special minority classes or remedial classes in the same school. (2) Intra-class segregation, which is created by organising different level-groups in a school class. (3) Inter-school segregation between regular schools, which can be caused by regional and housing segregation of different ethnic groups. (4) Inter-school segregation that can be based also on a separate system of regular and special (remedial) schools. (5) Inter-school segregation that can be caused by the organisation of private, foundation or faith schools in addition to the state school system.

5.4.1. Examples of segregation

In **Denmark**, there is an increased focus on the segregation of students into “white” and “black” schools.³¹⁰ Both majority parents and immigrant parents who can afford it choose private schools as an alternative to local schools with high immigrant populations. There are local initiatives, which led to classes with mainly “white” students. It has been reported that immigrant parents have been pressured to choose another school than the local school because of ethnicity (for instance in Ishøj, Farum, Slagelse, Frederiksberg). Some municipalities cope with the problem of segregation by setting up so-called “Magnet schools” to raise the quality and effectiveness of schooling. They are trying to make it possible for both majority and minority parents to choose the local school instead of disseminating students on the basis of ethnicity.

³¹⁰ A huge amount of articles in newspapers and journals have been published; see for instance: Albert, P. “Skoleledere vil have kvoter for tosprogede” i Mandagmorgen, nr. 26, 16. august 2004, p.p. 5-8, mlt@information.dk; “Skolen i ghettoen: når grænser krydes” i Information, series of articles 4.th., 5.th., and 7.-8.th of August 2004, Johansen, J.R. “Alberstlundmodellen er ulovlig”: www.folkeskolen.dk, (05.11.04) 03.11.2004; Samir, M. “Ingen let løsning på integration i skolen” i Politiken p. 6. 17.06.04, 2004.; Christiansen, F. “Skole forbeholdt indvandreneres børn” i Politiken 13.05.04, p. 6, Political documents from municipalities on segregation and dissemination of bilingual students: Albertslund kommune: <http://www.albertslund.dk/boern/og> Undervisningsforvaltningen and Uddannelses- og Ungdomsforvaltningen, Afdelingen for Tosprogudviklings hjemmeside: <http://www.tosprogede.kk.dk/nyhedsarkiv> (05.11.04) and the Ministries announcement of legalisation addressing the question can be found at Undervisningsministeriets hjemmeside: <http://presse.uvm.dk/nyt/pm/tosprogede.pdf> p.2. (05.11.04).

In the **Netherlands**, ethnic segregation in schools is often greater than residential segregation. This seems to reflect that school choice is not only based on proximity, but also based on the ethnic composition of the schools' population. The number of primary schools with more than 70 per cent ethnic minority students rose from 129 in 1986 (of the 8,300 total) to 343 in 2003.³¹¹ Despite the fact that measures that imply differentiation between ethnic and native pupils do not comply with the Dutch Equal Treatment Act, schools have been known to revert to measures such as the introduction of waiting lists for ethnic minority pupils to counterbalance any 'disproportion' in the schools population.

In **Sweden**, an increased housing segregation is also reflected within the school system. In 2003, the Government commissioned the National Agency for School Improvement to amend the situation in both pre-schools and compulsory schools in segregated areas. There is social and ethnic segregation in many municipalities and a concentration of students who are under-achievers. The majority of these students have foreign backgrounds, but there are also students with a Swedish background living in these areas.³¹²

Given the wealth of information supplied by NFPs about educational segregation of Roma children, which is particularly acute in some new Member States, the following section focuses on the specific problem of Roma segregation.

5.4.2. Examples of Roma segregation

The continuing segregation of Roma children in 'special schools' is the most crucial problem for the educational system in the **Czech Republic**. They are assigned to such schools after taking an I.Q. test. According to some NGOs, this I.Q. test is not responsive to cultural diversity in that, for example, it fails to take into account the fact that Roma children are confronted with terms that are of low importance in their culture.³¹³ In 2004 a law was adopted by the Czech parliament which has already started to make some progress in tackling this segregation.

In **Denmark**, the practice of the Municipality of Helsingør to place children with Roma background in special classes for children with unusually high absence rates from school has been deemed illegal after a complaint was filed. In September 2004, the County Council, in a letter to Helsingør Municipality, concluded, with reference to the Ministry of Education, that when maintaining the special classes

³¹¹ The Netherlands, Letter to the Ministry of Education, Culture and Science in the Lower House, 23 April 2004, PO 00-2004/19279.

³¹² Sweden, Ministry of Education and Science (2003), Promemoria. Bilaga till regeringsbeslut 2003-05-28, nr 26. *Uppdrag om förbättrad förskole- och skolsituation i segregerade områden*.

³¹³ see Radostný, L. (ed) (2004) *Závěrečná zpráva Masokombinát Kladno*, Plzeň: Department of Anthropology, Faculty of Humanity Studies, West-Bohemian University in Pilsen – not published, a final report on the long-term stationary research of socially excluded localities, for the purposes of The Ministry of Labour and Social Affairs (contract No. HS 108 03)

for pupils with high absence rates, Helsingør Municipality was “acting against the Act of the Folkeskole”.³¹⁴

In June 2004, parents occupied a primary school in Sagheika Achaia, **Greece**, with the aim of preventing the area’s Roma children from registering in the school for the forthcoming school year.³¹⁵ The non-Roma parents argued that the “excessive” number of Roma students (70 pupils out of 120 are Roma) was causing dysfunctions in the school and in the quality of education provided to their own children. The municipal council issued a decision encouraging the educational authorities to establish special preparatory classes and a regular special school for Roma children inside the Roma settlement, in order to avoid problems in the regular school activity. In the special school, a special Roma children education programme is actively implemented. Nevertheless, this is still segregating the Roma pupils rather than integrating them in normal schools.

In **Spain**, a disproportionately high concentration of migrant or Roma students³¹⁶ in many public schools leads to ‘ghettoisation’ and to the perpetuation of inequality of opportunity. Several educational plans launched by a number of Spanish Autonomous Communities focus on a more balanced distribution of foreign migrants between public schools and State-assisted private schools. In particular, in some Catalan areas, there is an acute social division as far as education is concerned. It has recently come to light that in State-assisted private schools, 66.7 per cent of the students finish higher secondary education, while in public schools 45 per cent finish. On December 2004, a EU-based report³¹⁷ denounced the fact that many Spanish state schools located in areas with large Roma populations have become “ghettoised” in the last ten years.

In **Latvia**, in 2003/04, 28 per cent of Roma students are registered in special classes (18 per cent) or special schools (10 per cent). Since 1997, special classes for Roma children have been established in seven cities and towns.³¹⁸ With the exception of the Riga State Technical Schools, Roma children are segregated from other school children. Although the goal is allegedly to help Roma children integrate into regular classes over time, in reality no such movement has yet been observed. These special classes are exclusively in Latvian, and only rarely, like in the Ventspils Evening High School, do teachers speak any Romani.

³¹⁴ Documents from the case are available at <http://www.romnet.dk/index.html?forside.html&l> (05.11.04).

³¹⁵ “Katelavan to scholio gia na min graftoun ta Tsigganopoula” (They seized the school to stop Gypsy children from registering), in: *Ta Nea* (03.06.2004), PUBGR0879. Many other similar cases are reported by the media e.g. Nodaros, M. (2004), “Den theloun ta Tsigganopoula” (They do not want Roma children), in: *Eleftherotypia* (04.06.2004).

³¹⁶ This was the core of a complaint made by the Parents’ Association of a public school in the city of Santander (Cantabria), that is, an excessive percentage of Roma students (45 per cent).

³¹⁷ European Commission (2004), *The situation of Roma in an enlarged European Union*, available at: http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/roma04_en.pdf (03.01.2005).

³¹⁸ Latvian Centre for Human Rights and Ethnic Studies, *The Situation of Roma in Latvia* (2003), Riga: p.24.

In **Lithuania**, in September 2004, the media reported³¹⁹ on a special class for Roma children at Žagarės Special Boarding School, a school for students with mental disabilities. The report caused some controversy. According to information gathered by the NFP for Lithuania from representatives of the school, the school's first grade includes five Roma children and one Lithuanian girl but no separate class has been formed exclusively for Roma children at this school.

The Third Survey on Roma in **Hungary**³²⁰ contains important data concerning the education of Roma children, especially in terms of different types of segregation, such as separate Roma classes or schools. In 2003, more than 12 per cent of Roma children studied in classes where all or most of the children were Roma; half of them studied in classes with half Roma and half non-Roma students; and only one third studied in classes where the majority of children were non-Roma. The most unexpected result is that the highest rate of children in ethnically homogenous Roma classes and classes with a Roma majority was found in Budapest. Also, in 2003, nearly 15 per cent of Roma children in primary education were labelled mentally retarded or as students with learning disabilities. They were segregated in classes where the quality of education is not high enough to continue their studies. Again, the highest rate could be seen in Budapest, where more than one fifth of Roma children were defined as somehow disabled.³²¹ In September 1999, a newly appointed headmistress of a school realised that there was no expert opinion on the basis of which pupils were referred to the school's so-called "special merged class", which has a different educational plan. In February 2000, a parent requested assistance of the Legal Defence Bureau for National and Ethnic Minorities' (NEKI) on this matter. His daughter, now in seventh grade, had been placed in the school's special class after first grade, after they unexpectedly had been told that the child would fail in school. Parents at the time believed it was wiser not to object to the teacher's opinion. Judicial proceedings followed. In June 2004, the County Court of Borsod obliged the defendant to pay more than four million HUF as non-pecuniary damages to the plaintiffs. It is the first time the court delivered such a judgement in connection with discrimination in education. Although this particular case was not seen as a case of racial/ethnic discrimination, the judgement will constitute a useful precedent in future lawsuits launched because of educational discrimination.

There are frequent reports in **Slovakia** about the segregation of Roma children within the education system. Many non-Roma parents enrol their children in schools with lower concentrations of Roma children. In particular, in the vicinity of segregated Roma settlements, this leads to homogeneous Roma classes or schools. Currently, two principal ways of eliminating the segregation of Roma children are being attempted. One uses motivational means, while the other applies coercive means. Motivational means amount to awarding grants to projects aimed at

³¹⁹ Paškevičienė, Z. (2004) "Žagarės pedagogai užsimojo išmokyti čigonus", in: *Lietuvos žinios*, No. 212 (10 942), p. 3.

³²⁰ Kemény, I – Janky, B – Lengyel, G (2004) *A magyarországi cigányság 1971-2003*, Budapest: Gondolat Kiadó-MTA Etnikai-Nemzeti Kisebbségkutató Intézet.

³²¹ Kemény, I – Janky, B – Lengyel, G (2004) *A magyarországi cigányság 1971-2003*, Budapest: Gondolat Kiadó-MTA Etnikai-Nemzeti Kisebbségkutató Intézet, p. 94.

instructing teachers how to educate Roma children, publishing textbooks, etc. Coercive means include possible legal actions against school directors who are formally responsible for transferring children into special schools. School legislation³²² stipulates the exact mechanisms that must be observed before making a decision to place or transfer children into special schools. A thorough supervision of these mechanisms might prevent unjustified transfers.

5.5. The issue of religious symbols

Different laws and regulations exist regarding the use of religious symbols in schools in EU Member States. While the issue has become quite controversial in some Member States, it is considered to be of less relevance in others.

From September 2004, the school regulations of the *Provinciale Handelsschool Hasselt* in **Belgium** stipulated a ban on wearing any sort of head cover in the classroom. Six Muslim girls, together with their families, contested this regulation. Initial reconciliation efforts by the Centre for equal opportunities and opposition to racism (CEOOR) did not result in an acceptable solution for the school and the families. In order to settle the situation, the girls started proceedings against the regulation. On October 6, 2004 the court decided that ‘freedom of religion’, as protected in the Belgian constitution, has its limits and, thus, turned down the request of the six girls. The six girls are to lodge an appeal against this judgement. A decision by the Court of Appeal is expected in June 2005.

In **Germany**, as described in Chapter 2, a number of Länder have introduced legislation banning the wearing of the headscarf in school by teachers, but a proposal for something similar in **Denmark** was withdrawn.

In **Spain**, the 2003 report of S.O.S. Racismo includes two incidents in relation to the use of different religious symbols in schools. A French school located in Madrid expelled two sisters for wearing headscarves, and the director of a Catalan school prohibited two female students from wearing chadors. In the latter case, the mediation of the Catalan Department of Education resulted in the students being permitted to wear such clothing.

In **France**, the new law on the application of the principle of secularity forbids the wearing of conspicuous religious symbols, by which a student ostensibly manifests a religious belief, in elementary, secondary and high schools. The law was adopted on March 15th, 2004, and published on March 17th, 2004. The wearing of discreet religious signs remains authorised. The law further instructs each school to adopt a house regulation and put in place internal procedures for the school year 2004/05 that should help manage the enforcement of the law by processes of mediation and dialogue with the student, eventually followed by disciplinary measures. According

³²² Slovakia / Vyhláška Ministerstva školstva Slovenskej republiky č. 49/2004 ktorou sa mení vyhláška Ministerstva školstva Slovenskej republiky č. 212/1991 Zb. o špeciálnych školách v znení neskorších predpisov, §14, ods. 2 (14.01.2004).

to the Ministry of Education, in 2003, 1200 young girls attended their first school day wearing an Islamic veil. Although precise figures are not yet available, the Minister of Education has declared that the number of girls who refuse to take off their veil after a process of mediation is substantially lower in 2004.³²³

In the **Netherlands**, the Equal Treatment Commission brought out a recommendation³²⁴ concerning religious clothing such as the headscarf and the niquaab (a veil that covers the entire face) in schools. Following the Equal Treatment Act, schools are allowed to prohibit veils if they can provide objective justification as to why the veils pose problems. Some objective justifications are: veils inhibit communication between pupil and teacher, and schools are not able to identify pupils wearing such veils, which may lead to security problems, such as having unauthorised people in the school.

In **Austria**, in May 2004, a 13-year-old girl attending a secondary school in the town of Linz, Upper Austria, was forbidden to attend school wearing a headscarf.³²⁵ The reason given by the school principal was that the school had set up general guidelines that forbade pupils to wear any headgear. School authorities soon made it clear that in Austria the banning of headscarves in schools was a violation of religious freedom.

In **Sweden**, schools can exercise their right to prohibit the wearing of burqas, in accordance with the general order-regulations, if they are proved to be a disturbing factor, e.g. if it causes trouble between the students, or if it creates uncertainty among other students. According to the National Agency for Education, so far, no schools in Sweden have taken a formal decision to prohibit the wearing of burqas.³²⁶ A school in Gothenburg is the only one that has confronted this issue. The authorities of this school have made voluntary individual agreements with Muslim girls not to wear the burqa in school.

In the **United Kingdom**, decisions over uniforms and the wearing of religious symbols are a matter for individual schools and their governing bodies. There is a long tradition of tolerance towards the wearing of religious symbols such as headscarves, crosses, skullcaps, turbans, etc. Indeed, religious communities united in criticising the headscarves ban in French schools imposed during 2004.³²⁷ But while most schools have allowed pupils to wear a headscarf, there have been isolated disputes about other types of clothing. For example, during 2004 a Muslim schoolgirl in Luton was engaged in an on-going case through the courts in which

³²³ In fact, the French Minister of Education announced in January 2005 that “the amount of expulsions had been limited to 48 students” and that “more than 550 of these same situations had found a solution in dialogue.” (*Libération* 16. March 2005)

³²⁴ The Equal Treatment Commission advises Equal Treatment Councils regarding veils and headscarves in schools, April 16, 2003.

³²⁵ *Oberösterreichische Nachrichten* (15.05.2004) “Linzer Hauptschuldirektorin erließ Kopftuchverbot für junge Muslimin”.

³²⁶ Interview with Ingegärd Hilborn at the National Agency of Education in November 2004.

³²⁷ BBC (01.09.2004) *Schools urge headscarf tolerance*, available at <http://news.bbc.co.uk/1/hi/education/3618054.stm> (12.10.2004).

she argued that she should have the right to wear an ankle-length gown, in keeping with her religious beliefs.³²⁸

Along with the current debate focusing on religious symbols, many Member States are also engaged in a ‘faith schools’ debate.

5.6. Faith schools

A public middle school in the city of Milan, **Italy**, agreed to the request of some orthodox Muslim parents to set up a class of Muslim-only pupils at the beginning of the 2004/05 school year.³²⁹ The request arose because the pupils involved had gone through both pre-primary and primary levels at the Islamic Cultural Centre, which does not follow the national curriculum. Over the years, teachers at a public school, which most of the children from the Islamic Centre’s primary education programme attended, had noticed that even though these pupils were born and have had their education in Italy, they still encountered severe socialisation and linguistic difficulties at middle school. When the project to set up a separate class was made public, it led to an extensive debate, resulting in calls by some local politicians to stop the project. The Ministry of Education promptly intervened to block the project.

Despite the small number of students participating in Islamic education in the **Netherlands**, these types of schools are viewed with a certain amount of suspicion. For this reason, the Schools Inspectorate monitors the religious lessons at such schools in case students are being incited to intolerance or hatred. The immediate cause for the monitoring programme were concerns raised in the report “Islamic Schools and Social Cohesion”, drawn up by the Inspectorate.³³⁰

In the **United Kingdom**, the government’s 2001 White Paper on the reform of secondary education³³¹ promised an expansion of faith schools. However, this has not materialised. One reason for this is ambivalence within the government in the wake of the Cantle report³³² into the causes of the riots in Oldham and other northern towns in 2001, which blamed segregated education as one of the root causes for the riots. Nonetheless, there still remains disillusionment amongst the Muslim community concerning provision for Muslims in non-faith state schools. In

³²⁸ BBC (12.02.2004) *Legal action in Muslim dress ban*, available at <http://news.bbc.co.uk/1/hi/england/beds/bucks/herts/3482295.stm> (12.10.2004) (In fact, in March 2005 the Court of Appeal ruled in her favour).

³²⁹ *Corriere della Sera*, (10.07.2004); *la Repubblica*, (10.-14.07.2004).

³³⁰ The Netherlands, Letter from the Ministry of Education, Culture and Science to the Lower House, April 17, 2003, PO/KB/03/14559.

³³¹ Department for Education and Skills (2001) *Schools Achieving Success White Paper*, London: Department for Education and Skills, available at <http://www.Department for Education and Skills.gov.uk/achievementsuccess/index.shtml> (12.10.2004).

³³² Home Office (2001) *Community Cohesion: Report of the Independent Review Team – the Cantle Report*, London: Home Office, available at http://www.homeoffice.gov.uk/docs2/comm_cohesion.html (12.10.2004).

June 2004, the polling organisation, MORI, reported on the outcomes of research related to the demand for a Muslim school in Bristol.³³³ Nine out of ten of the Muslim parents surveyed agreed with the model of an Islamic secondary school to be set up within the state system.

5.7. Good practices and programmes for awareness raising

The national annual reports include a variety of good practice examples from governmental and non-governmental organisations, some of which are described below.

The students of the Eugeni d'Ors secondary school, located in a working-class neighbourhood of Badalona, **Spain**, a municipality close to Barcelona with large migrant and Roma populations, have edited a book³³⁴ which consists of 20 tales and legends of all nationalities represented in the school: Morocco, China, Guinea, Ghana, Bolivia, Colombia, Ecuador, Chile, Russia, Pakistan and Catalonia. The students themselves drew up the tales in their original languages and translated them into Catalan.

Educate Together published a curriculum on the values and ideals of education for children of diverse faiths and cultural backgrounds. This is **Ireland's** first multi-denominational Ethical Education Curriculum for primary education. Educate Together is the representative organisation of the Educate Together schools and associations throughout the Republic of Ireland. There are now 31 of these schools that are multi-denominational.³³⁵

The Report of the Commission for Educational Reform³³⁶ makes detailed recommendations on the process, context, and content for an inter-cultural education system to be introduced in **Cyprus**. The implementation of the proposals (expansion of mother tongue instruction for migrants, programmes of teacher training in teaching Greek as a second or foreign language, the promotion of the idea that being European has multiple narratives, etc.) requires the re-writing of history books, co-operation with other schools in Europe, a programme for co-operation in schools of the Turkish-Cypriot community, common training programmes for Greek-Cypriot and Turkish-Cypriot children and introduction of a programme for anti-racist education.

³³³ MORI (2004) Demand for a Muslim School in Bristol, available at http://www.bristol-lea.org.uk/policies/pdf/Final_report.pdf (12.10.2004).

³³⁴ Associació Lliure d'Alumnes de l'IES Eugeni d'Ors (2003), *La Huaca. El tresor amagat. Contes del món*, Badalona: Edicions Fet A Mà.

³³⁵ <http://www.educatetogether.ie/> (20.2.2005).

³³⁶ Report of the Commission for Educational Reform (2004): "Demokratiki kai Antropini Paedia stin Evrokypriaki Politeia", available in summary form at <http://www.moec.gov.cy/metarithmisi/manifesto.pdf> and in full at http://www.moec.gov.cy/metarithmisi/ethesi_epitropis.pdf.

In **Estonia** the Ministry of Education and Research initiated in 2004, in cooperation with national culture societies, the compilation of a series of basic school exercise books to introduce different national cultures and traditions to schoolchildren. Also the TV broadcast series “Ethno-mosaic” was supported to encourage the maintenance of the culture and identity of fourteen different ethnic minorities in Estonia. Exercise books and recordings of broadcasts are distributed to all schools in Estonia.

The city of Amsterdam, in the **Netherlands**, started the project “Second world war in perspective”, which is a part of the ‘Amsterdam offensive against discrimination in schools and to increase tolerance and respect’. The topics of this project deal with the Second World War, the holocaust, the role of former colonies, and students’ countries of origin. It aims to counteract discrimination and antisemitism and to increase tolerance and respect.³³⁷

In the framework of the Community Action Programme to combat discrimination, **Austrian** pupils and teachers were invited to develop projects on the topic of discrimination and to participate in a competition between these projects.³³⁸ A private Catholic school that documented the case of a Muslim girl who had been refused admission for religious reasons, in 2001, was one of the prize-winning projects. It described the process through which the school changed its regulations, which now allow for the participation of children of Muslim faith.³³⁹

As part of the PHARE *Civil Society Development* programme, the “*Run From Exclusion. Reinforce Roma Education*” project in **Poland** is being implemented by the Integration Association in cooperation with the Roma school in Suwałki as of February 2004. The project’s goal is to support education of Roma children by preparing teachers and educators to identify and resolve problems occurring during the educational process. The first phase of activity was the publication of a handbook for elementary school teachers entitled ‘*The Roma. What every Teacher Should Know*’.³⁴⁰

The project *Integration of Roma children into Mainstream Education in Slovenia*³⁴¹ was designed and implemented by the Developmental Research Centre for Educational Initiatives Step by Step at the Educational Research Institute of **Slovenia**, based in Ljubljana. It aims to improve the educational prospects of Roma children in the pre-schools and elementary schools in the Dolenjska region. After two years of the project, a significant improvement can be observed, not only regarding class attendance of Roma children, which continues to rise, but also in

³³⁷ More information at: <http://www.amsterdamleefstamen.nl> (05.01.2005).

³³⁸ Rechte haben macht den Unterschied – der Schulwettbewerb gegen Diskriminierung, <http://www.rechtehaben.info> (10.10.2004).

³³⁹ Documentation of the project “Öffentliches Gymnasium der Franziskaner – Der Fall ‘Burcu’” available at http://www.rechtehaben.info/showroom.php?pid=90&PHP_SID (10.10.2004).

³⁴⁰ Milewski J. (2004) Romowie. Co każdy nauczyciel wiedzieć powinien [The Roma. What every Teacher Should Know], Suwałki: Stowarzyszenie Integracja.

³⁴¹ Primarily financed by the Roma Education Initiative of the Open Society Institute with assistance from the US Embassy and Ministry of Education, Science and Sport.

higher marks of Roma pupils, and in changed stereotypes, which were often used by teachers when addressing Roma children.³⁴²

In **Slovakia** a new policy for Roma in primary education includes introducing the post of assistant Romany teacher, creating auxiliary education programmes, reducing the number of pupils in a class, and teaching the Romany language.

The Finnish League for Human Rights³⁴³ has published a card set about ethnic minorities and Sámi people in **Finland**, for educational use in February 2004. The objective of this card set is to increase pupils' knowledge about different minorities and appreciation of other cultures in order to promote a more equal and tolerant society. The card set presents sixteen different ethnic groups. Every card holds a drawing from a child belonging to a specific ethnic group together with basic information about that ethnic minority. Altogether 3,000 copies of the card set were printed. In addition to the cards there is also a guide about how to use the cards in educational situations. The target group of the card set is teachers in day-care and comprehensive schools.

In the **United Kingdom**, the Department for Education and Skills (DfES) launched the *Aiming High* national strategy, which is a concerted effort to lift the achievement of underachieving minority ethnic pupils.³⁴⁴ It includes a scheme set up specifically to raise standards for African Caribbean pupils,³⁴⁵ who are one of the lowest performing groups in the country. The strategy includes focused work in 30 secondary schools to raise the achievement of Black pupils, a more robust inspection regime, and publication of achievement data, as well as training for primary teachers to help them better support bilingual pupils.

³⁴² Roma Education Initiative (2004), *Integration of Roma children into Mainstream Education in Slovenia. Annual Research and Evaluation Report*; The report is an external evaluation and was provided for the purpose of this report only.

³⁴³ Finnish League for Human Rights, available at <http://www.ihmisoikeusliitto.fi/> (18.11.2004).

³⁴⁴ Department for Education and Skills (2003) *Government to Boost Minority Ethnic Achievement* – Twigg, London: Department for Education and Skills press release, available at http://www.DepartmentforEducationandSkills.gov.uk/pns/DisplayPN.cgi?pn_id=2003_0215, (12.10.2004).

³⁴⁵ Included in this definition are pupils of Black Caribbean, pupils of White: Black Caribbean, and pupils of African and White: Black African origin (as defined by the PLASC categories outlined in section one).

6. Racist violence and crime

The racist violence and crime sections of the 25 RAXEN national reports for 2004, on which this chapter is based, present a varied picture of the nature and extent of racist violence and crime in the EU. Given that publicly available official data on racist violence and crime is lacking in most Member States, the chapter opens with an overview of what is and is not known about these crimes. Information is presented in tabular form in an effort to highlight differences in data collection between Member States. An overview of trends in racist violence and crime is presented for seven Member States where this information is available for the years 2001-2003.

The chapter specifically addresses the following themes: the implications of EU enlargement on the manifestation of racist violence and crime; notable incidents that either directly or indirectly have had an impact on racist violence and crime in 2004, and the particular problem of violence by public officials. The chapter concludes with an outline of 'good practice' initiatives that variously address the problem of racist violence and crime in three core areas, namely: police initiatives, victim-centred initiatives, and improvements in data collection.

6.1. An overview of racist violence and crime

Racist violence and crime continues to be a problem in EU Member States. In their country reports, the EUMC's National Focal Points (NFPs) describe a range of incidents involving different types of victims and perpetrators, with some common themes emerging between Member States. However, as many Member States do not specifically define 'racially motivated' crime³⁴⁶ and, where they do, often fail to collect comprehensive data on racist violence and crime, it remains very difficult to describe the 'true' extent and nature of racist violence and crime with any accuracy.

The Commission's Proposal for a Council Framework Decision on Combating Racism and Xenophobia³⁴⁷ sets out to establish a framework for punishing racist and xenophobic violence as a criminal offence. The Framework Decision would bring Member States closer together with respect to their laws on racist and xenophobic offences, and, if adopted, might encourage data collection mechanisms on racist crime and violence across the EU. However, a number of Member States have expressed reservations in consideration of the draft Framework Decision, and

³⁴⁶ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in the EU15', Chapter 2 (specifically 2.2 and Table 1).

³⁴⁷ Proposal for a Council Framework Decision on Combating Racism and Xenophobia – COM(2001) 664 final.

at the time of publication, discussion concerning the Framework Decision is on-going.

6.1.1. Official and unofficial sources

A variety of official and unofficial data collection mechanisms and research sources on racist violence and crime exist in Member States, with some countries having relatively comprehensive data collection and others having virtually none.

As reported in the EUMC's comparative report on racist violence in the EU15,³⁴⁸ it appears that those Member States with well-established *official* data collection mechanisms also tend to have a better range of *unofficial* sources of data on racist violence and crime – ranging from NGO reports to academic research papers.

Unofficial sources of data on racist violence and crime are typically gathered by NGOs working in the field of anti-racism – such as SOS Racismo in **Spain**, which collects general data on acts of aggression and discrimination against ethnic minorities and foreigners, and 'People Against Racism' (PAR) in **Slovakia**, which collects information through its anti-racist hotline. In addition, some Member States have well established specialist NGOs that collect data on antisemitic violence and crime, such as the Community Security Trust in the **UK**, and the *Conseil Représentatif des Institutions Juives en France* (CRIF) in **France**. There are also organisations that collect reports on anti-Muslim incidents, but these tend to be less well-established than their Jewish counterparts. In addition, in some Member States organisations collect information about the activities of the extreme right – such as the anti-fascist association 'Never Again' in **Poland**.

On the basis of information supplied by NFPs,³⁴⁹ the EU 15 can be categorised according to the scope and range of their unofficial sources of data on racist violence as follows:

- **A limited number of unofficial data sources:** Austria, Belgium, France, Greece, Ireland, Italy, Portugal, Spain, Sweden.³⁵⁰
- **A range of unofficial data sources:** Denmark, Finland, Germany, Netherlands, UK

Given the resource constraints that many specialist NGOs have, unofficial data sources tend only to be able to offer a limited overview of the extent and nature of racist violence and crime, and are often reduced to collecting information from media reports. In comparison, official data sources, based on government criminal

³⁴⁸ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in 15 EU Member States', 2005, Chapter 19.

³⁴⁹ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in the EU15', Chapter 19.

³⁵⁰ According to the EUMC's Comparative Report on 'Racist Violence in 15 EU Member States', Luxembourg suffers from an absence of both unofficial and official data collection and research on racist violence and crime.

justice data, should, in theory, have the resources at their disposal to capture a range of racist offences.

The following section presents an overview of *official* data on racist violence and crime in, first, the EU15 and, second, the ten new Member States that joined the EU on 1 May 2004.

6.1.2. Official data for the EU15

On the basis of official reports/records of racist violence and crime made available to the NFPs, Table 1 presents a summary overview of the latest information for each of the EU15. On the basis of differences in legislation and criminal justice data collection,³⁵¹ and the public's willingness to report racist violence and crime, (in the context of more or less active policies by the authorities to stimulate the public to do so) the nature of the data in Table 1 is very different and, therefore, is not directly comparable. However, the data can be comparatively analysed with respect to what kind of information each Member State collects.³⁵²

Table 1: Racist violence/crime reported by official sources in the EU 15³⁵³ (2003-2004)³⁵⁴

	Data Source	2003	2004 Latest info available at time of writing (March 2005)
Belgium*	CEEOR - Centre for Equal Opportunities and Opposition to Racism ³⁵⁵	The CEEOR was approached 1827 times concerning racism, including incidents of violence	NO data available
Denmark	PET (Danish Civil Security Service)	52 criminal incidents with suspected racist motive	Until 24/11/05 24 criminal incidents with suspected racist motive
Germany	Federal Office for Internal Security/Police	11,576 crimes registered as 'politically motivated criminality, right-wing'. Of these, 10,792 were	First ten months 2004 6,474 crimes registered as 'politically motivated criminality, right-wing'. Of

³⁵¹ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in the EU15', Chapter 2 (specifically 2.2 and Table 1).

³⁵² <http://eumc.eu.int> – Comparative Report on 'Racist Violence in 15 EU Member States', see section 3.4.

³⁵³ The EU15 refers to Member States prior to 1 May 2004.

³⁵⁴ The data in this table is not directly comparable between Member States as it is taken from different sources. Original sources: RAXEN NFP reports. It should also be noted that when NFPs provided a range of data – for example, on complaints as well as recorded offences – then the higher figure was taken in order to give a 'best estimate' of reporting and recording practices.

* The data provided is on general discrimination, and can include incidents of racist violence/crime.

³⁵⁵ The CEOOR is considered here as 'semi official'.

		'extremist', of which 759 were 'violent extremist'.	these, 397 were violent. Of these 6,474 crimes – 1,208 were xenophobic, of which 203 were violent.
Greece	–	NO data available	NO data available
Spain	–	NO data available	NO data available
France	Ministry of the Interior	817 racist, xenophobic and antisemitic threats and acts reported (600 threats and 217 acts). Of these 817, 229 were 'racist' and 588 were antisemitic.	1,565 racist, xenophobic and antisemitic acts and threats reported. Of which, 369 violent acts against people and property were reported. Of the 1,565 incidents reported, 970 were antisemitic.
Ireland	Police	81 incidents with a 'racist motive', of which 53 were violence related	NO data available
Italy	–	NO data available	NO data available
Luxembourg	–	NO data available	NO data available
Netherlands*	National Discrimination Expertise Centre (LECD)	204 discriminatory offences recorded	NO data available
Austria	Police Ministry of Interior Ministry of Justice	436 complaints against persons related to a range of prohibited racist/xeno acts 299 crimes with right-wing extremist, xeno, or antisemitic nature	NO data available
Portugal	–	NO data available	NO data available
Finland	Police	2001 – 448 reports of racially motivated crime 2002 – 3,367 reports of crime against foreigners or ethnic minorities, of which 367 had racist motive	NO data available
Sweden	Swedish Security Police	2,308 xenophobic crimes registered 128 antisemitic crimes registered	NO data available
UK (data for England and Wales)	Home Office Home Office	Period 2002-2003 49,078 racist incidents recorded by police 31,035 racially/religiously aggravated offences recorded by police	Period 2003-2004 52,694 racist incidents recorded by police 35,022 racially/religiously aggravated offences recorded by police

Table 1 presents official data on complaints, reports and records of racist violence and crime – as well as associated acts of discrimination where racist violence and crime are not specifically recorded. Although data is not directly comparable between Member States, as different definitions of and methods for counting racist violence and crime are employed, Table 1 presents a useful overview of what data is collected by official bodies (and includes the latest information available at the time of writing – March 2005).

Taking data for 2003: The **UK**, with 49,078 racist incidents recorded by the police, in the 12 month period 2002-2003, appears to have the highest number of officially recorded incidents. **Germany**, with 11,576 crimes registered in 2003 as ‘politically motivated criminality, right-wing’, seems to be in second place. In comparison, other Member States, such as **Denmark** and the **Netherlands**, apparently have much lower figures. In turn, **Greece, Spain, Italy, Luxembourg** and **Portugal** have no publicly available official data on racist violence and crime for the years 2003 and 2004.

Reading this data at face value we might (wrongly) conclude that some countries, such as the **UK** and **Germany**, have a much greater problem with racist violence and crime than other countries, such as **Italy** and **Spain**. However, Table 1 tells us as much about the inadequacy of data collection on racist violence and crime in most Member States as it does about the actual extent of racist violence and crime.³⁵⁶

³⁵⁶ The EUMC’s Comparative Report on Racist Violence offers a more comprehensive overview and discussion of the data supplied in Table 1, with additional information for the years 2001 and 2002; see: <http://eumc.eu.int> – ‘Racist Violence in 15 EU Member States’.

6.1.3. Trends in seven Member States

A more meaningful way of interpreting data on racist violence and crime is to look at trends over time within the same country. Table 2, below, presents data for the years 2001, 2002 and 2003 for seven Member States.³⁵⁷

Table 2: Trends Over Time, 2001-2003

Official reports/records relating to racist crime/violence and associated activities³⁵⁸

	2001	2002	2003	% change 2001-02	% change 2002-03	% change 2001-03
Austria	528 complaints	465	436	- 11.9	- 6.2	- 17.4
Denmark	116 incidents	68	52	- 41.4	- 23.5	- 55.2
Germany	14,725 crimes	12,933	11,576	- 12.2	- 10.5	- 21.4
Ireland	43 incidents	102	81	+ 137.2	- 20.6	+ 88.4
Netherlands	198 offences	242	204	+ 22.2	- 15.7	+ 3.0
Sweden	2,670 crimes	2,260	2,308	- 15.4	+ 2.1	- 13.6
UK	53,092 incidents	54,370	49,078	+ 2.4	- 9.7	- 7.6

Of the seven Member States in Table 2, five (**Austria, Denmark, Germany, Sweden** and the **UK**) show an overall downward trend in official reports/records of racist violence and crime between 2001 and 2003 (percentage change 2001-2003). In comparison, two Member States (**Ireland** and the **Netherlands**) show an overall upward trend in official reports/records of racist violence and crime between 2001 and 2003 (percentage change 2001-2003).

Comparing percentage changes in reports/records of racist violence and crime between the periods 2001-2002 and 2002-2003, a definite year on year fall in numbers only occurs for **Austria, Denmark** and **Germany**. In comparison, other Member States show fluctuating percentage changes between the periods 2001-2002 and 2002-2003.

³⁵⁷ Both Belgium and the Netherlands provide data on 'racist crimes' and *general discrimination*. However, according to evidence submitted by the NFPs, the Dutch data appears to be more focused on 'racist crime', while the Belgium data is more generic. Therefore it was decided to exclude the Belgian data from the trends mapping exercise.

³⁵⁸ The data in this table is not directly comparable between Member States as it is taken from different sources. Original sources: RAXEN NFP reports. It should also be noted that when NFPs provided a range of data – for example, on complaints as well as recorded offences – then the higher figure was taken in order to give a 'best estimate' of reporting and recording practices.

These trends can reflect an actual increase or decrease in racist violence and crime within individual Member States. At the same time, changing patterns in people's reporting and criminal justice recording of incidents might also form part of the reasons to explain these fluctuations. As an example, **Germany** introduced a new registration system for recording 'politically motivated criminality' at the beginning of 2001, and has since experienced a steady decrease each year in registered crimes. In **Ireland**, 2003 was also the first year in which racially motivated incidents were clearly defined to the police for recording under the PULSE registration system. The fluctuating trends in recorded incidents in Ireland, in the period 2001 to 2002 and 2002 to 2003, might be partially explained by the police having to adjust to this new registration system.

In turn, reports and records of racist violence and crime need to be interpreted against the backdrop of national and international events that can influence the manifestation of racist incidents – such as September 11th 2001.

6.1.4. Official data for ten new Member States

On the basis of official reports/records of racist violence and crime made available to the NFPs, Table 3 presents a summary overview of the latest information made available in each of the ten new EU Member States.³⁵⁹

Table 3: Racist violence/crime reported by official sources in new Member States (latest available data)

	Data Source	Latest available data
Czech Republic	Ministry of Interior	2003 – 236 'racist crimes' Jan-Nov 2004 – 209 'racist crimes' Jan-June 2004 – 96 cases in which State prosecutor delivered accusation based on racist, national, and other hatred
Estonia	–	NO data available
Cyprus	–	NO data available
Latvia	–	NO data available
Lithuania	Ministry of Interior and State Security Department keep info on court cases relating to incitement of national, racial, ethnic, religious or other hatred.	2004 Pre-trial investigations – 4 Court cases – 6

³⁵⁹ Those Member States that joined the EU on 1 May 2004.

Hungary	Police and Prosecutorial Crime Statistics (National Statistics Data Collection Programme), collects data on crimes against: 'State and humanity' (Criminal Code 139§ and 165§); 'freedom of conscience and religion' (Criminal Code 174/A §); 'member of a national, ethnic, racial or religious group' (Criminal Code 174/B §); and 'incitement against a community' (Criminal Code 269 §). Data kept on crimes, perpetrators and punishments relating to the above offences.	2004 1 crime against 'State and humanity' registered. 8 people accused under this category. 7 crimes against a 'member of a national, ethnic, racial or religious group' registered. 6 people accused under this category. 17 crimes of 'incitement against a community' registered. 6 people accused under this category.
Malta	–	NO data available
Poland	Police keep info on violation of different parts of Criminal Code related to extremist, racist and xenophobic propaganda/hate speech and acts (including religious)	2003 In total, 107 crimes reported
Slovenia	Police	2003 – 2 cases relating to prohibition of incitement to ethnic, racial or religious hatred/intolerance
Slovakia	Ministry of Interior General Prosecutor's Office Slovak Information Service Ministry of Justice	2002 – 109 racially motivated extremist crimes registered by police 2003 – 119 racially motivated extremist crimes registered by police 2004 – 79 extremist crimes registered by police

According to Table 3, the **Czech Republic, Hungary, Poland and Slovakia** are the only four new Member States that officially collect data (excluding limited references to court cases) on racist crimes and related activities. The NFPs for **Lithuania** and **Slovenia** refer to registered court cases relating to prohibited racist activities, but this information is extremely limited. In comparison, the NFPs for half of the ten new Member States – **Estonia, Cyprus, Latvia and Malta** – do not refer to any official sources of information on incidents of racist violence and crime, and related activities.

Bearing in mind the absence of official data on racist violence and crime in four of the EU's ten new Member States, the next section proceeds to discuss the implications of enlargement on the manifestation of racist violence and crime in Europe.

6.2. The new Member States

Both official and unofficial data sources on racist violence and crime are lacking in most of the ten new Member States – although, as evidenced by Table 1, this problem also occurs with respect to some of the EU15. As a result, NFP reports for the new Member States tend to be of a qualitative nature and are often reliant on anecdotal evidence. While this general absence of comprehensive data makes it difficult to map the problem of racist violence and crime in the enlarged EU, the NFP reports do offer some insights about vulnerable groups that, at times, paint a different picture of the problem to that in the EU15.

The main groups that are commonly identified in the EU10 as being particularly vulnerable to racist victimisation are, in alphabetical order: Africans, Asians (meaning people from south-east Asia, such as the Vietnamese), Jews, people from the former USSR, and Roma. Three of these five main vulnerable groups – Africans, Asians and Jews – are also commonly identified as vulnerable groups in the EU15. However, the Roma and people from the former USSR are two groups that dominate the picture of racist violence and crime in the new Member States.

The Roma have a long history of racist discrimination and victimisation throughout Europe. While the Roma are also victims of racist violence in the EU15, it appears that their victimisation is particularly acute in central and east European countries, where direct and indirect discriminatory attitudes and practices against Roma run deep – as noted in the NFP reports for the **Czech Republic, Hungary, Poland, Slovenia** and **Slovakia**. In addition, there is widespread hostility against Russians in the newly independent states, which is often combined with references to Russian criminality – as noted in the NFP reports for **Lithuania, Estonia** and **Latvia**. However, as indicated in the NFP reports for **Finland** and **Germany**, hostility towards ‘Russians’ is not exclusive to new Member States.

The **Estonian** NFP refers to a media report, from April 2004, concerning an aggressive group of around forty people who gathered in Tallinn with the intention to “punish those young Russians who are coming to steal in the neighbourhood”.³⁶⁰ In addition, the **Latvian** NFP, when relating the findings of an independent study from 2004, reports that foreigners most often referred to ‘Russian speakers’³⁶¹ when being interviewed about perpetrators of racist statements and physical threats.

Notably, the **Lithuanian** and **Polish** NFPs identified Chechens as a recently emerged group that is particularly vulnerable to racist victimisation. The Polish NFP contextualised this trend against the fact that Chechens made up eighty per cent of refugee applicants in Poland in the first eight months of 2004. Given that the bulk of Chechens are Muslim, and come from a war-torn country that is often identified by various governments as a seat of international terrorism, it is perhaps

³⁶⁰ LICHR, *National Report Estonia*, 2004, reference to report in Eesti Päevaleht (6/4/04).

³⁶¹ LCHRES, *National Report Latvia*, 2004, reference to study by Baltic Institute of Social Sciences (2004) ‘Ethnic Tolerance and Integration of the Latvian Society’, p.43.

unsurprising that Chechens are victimised and discriminated against as the religious and dangerous ‘Other’ in European societies.

Against this background, most NFPs in the new Member States, when asked to comment on Islamophobia, were unable to provide any concrete data about racist violence and crime against Muslims. In comparison, NFPs had more evidence of antisemitic attacks against both property and people, which often involved damage to and desecration of religious sites; for example in the **Czech Republic, Hungary Lithuania and Slovakia**.³⁶² (There was also severe desecration of a Jewish cemetery in **Poland** but there was some doubt as whether this vandalism had an antisemitic motive.³⁶³) In **Hungary** neo-Nazis burned an Israeli flag at a demonstration.³⁶⁴ However, and against a background of lack of data, the **Latvian** NFP indicates that both Jewish and Muslim associations report no incidents of antisemitism or Islamophobia, while the **Polish** NFP reports that the country’s Muslim Cultural Association recorded no notable cases in 2004.

In sum, as Table 3 illustrates, it is difficult to present a comprehensive overview of the extent and nature of racist violence and crime in the new Member States due to a lack of data. Because of this, and given that 2004 was the first year in which the new NFPs were asked to report to the EUMC on incidents of racist violence and crime, it is difficult to identify emergent trends, with any certainty, in terms of both victims and offenders.

6.3. Notable incidents

In **Spain**, on 11 March 2004, a series of bombs exploded in train stations throughout Madrid killing nearly 200 people. A group of radical Moroccan Islamists was identified as the main suspects by the Spanish authorities.

While the Spanish population did not visibly direct its outrage over the bombings at the wider Islamic community in Spain, in **France** the NFP reported that ‘The increase in acts of violence perpetrated in March and April seem to be a wave of ‘repercussions’, directly linked to the terrorist attacks in Madrid’.³⁶⁵ According to the French NFP, the first half of 2004 was marked by twice the number of anti-Muslim attacks as the same period in 2003. For example, in June 2004, around fifty Muslim graves were desecrated in Strasbourg³⁶⁶. These acts were swiftly condemned by the French President, along with other State representatives such as

³⁶² In the EU15, it also tends to be the case that there is more data collection on antisemitic acts, rather than anti-Muslim acts, by NGOs and government bodies; however, as reported by the UK NFP, this situation appears to be changing.

³⁶³ The cemetery in Mińsk Mazowiecki, June 2004

³⁶⁴ CMRS, *National Report Hungary*, 2004, p.22

³⁶⁵ CNCDH, Violence raciste ou xénophobe : un niveau sans précédent, document fourni par la RCRG, vendredi 2 juillet 2004 : Centre d’Etudes des Discriminations, du Racisme et de l’Antisémitisme, *National Report France*, 2004, p.25.

³⁶⁶ CNCDH, Violence raciste ou xénophobe : un niveau sans précédent, document fourni par la RCRG, vendredi 2 juillet 2004 : Centre d’Etudes des Discriminations, du Racisme et de l’Antisémitisme, *National Report France*, 2004, p.31.

the Minister of Interior.³⁶⁷ At the same time there was an increase in antisemitic incidents, when compared with the same period in 2003. For example, in April 2004, 127 Jewish graves were desecrated in Herrlisheim³⁶⁸. Other notable antisemitic incidents in the first half of 2004 included the complete destruction of a fresco made by Jewish children who were held in the Rivesaltes camp during the Second World War.³⁶⁹ In the first half of 2004, there were also a number of desecrations of Christian graves. In sum, French experiences of racist violence and crime – against Muslims, Jews and Christians – peaked in the first half of 2004, and, to some extent, can be explained by events in other countries, such as Spain. In comparison, other NFP reports do not refer to the Madrid bombings as a catalyst for events in their own countries.

In the **Netherlands**, on 2 November 2004, Theo van Gogh, a controversial Dutch filmmaker, was shot and stabbed to death in broad daylight. The assailant, a Dutch-Moroccan Muslim, objected to van Gogh's film which depicted violence against Muslim women by projecting verses of the Koran onto women's naked bodies. In November, in the immediate aftermath of the murder, the Dutch NFP reports there were 174 violent incidents related to the murder. In 106 cases, there was evidence of anti-Muslim violence, with mosques being targeted on 47 occasions. At the same time, in 34 cases there was evidence of violence against Dutch natives and their property, namely churches. Notable incidents include arson attacks, including an attack on an Islamic school in Uden, and a bomb attack on an Islamic school in Eindhoven. According to the Dutch NFP, the extreme right was involved in only 15 per cent of the above cases.³⁷⁰

The murder of Theo van Gogh had repercussions in other Member States. In **Denmark**, according to the Danish NFP, van Gogh's murder had a 'massive impact on the public and political debate about the freedom of expression, intolerance, respect for religious conviction and immigration in Denmark'.³⁷¹ In **Belgium**, the NFP refers to various incidents that can be connected to events in the Netherlands but which, strictly speaking, cannot be classed as Islamophobic, given the religious backgrounds of victims and perpetrators. For example, a few days after Van Gogh's murder, socialist Belgian senator Mimount Bousakla, who is Muslim, received death threats and had to go into police-assisted hiding before the perpetrator, a native Belgian who had converted to Islam, was caught. At the same time, four other non-Muslim Belgian politicians also received threats.

³⁶⁷ CNCDH, Violence raciste ou xénophobe : un niveau sans précédent, document fourni par la RCRG, vendredi 2 juillet 2004 ; Centre d'Etudes des Discriminations, du Racisme et de l'Antisémitisme, *National Report France*, 2004, p.32.

³⁶⁸ CNCDH, Violence raciste ou xénophobe : un niveau sans précédent, document fourni par la RCRG, vendredi 2 juillet 2004 ; Centre d'Etudes des Discriminations, du Racisme et de l'Antisémitisme, *National Report France*, 2004, p.29

³⁶⁹ CNCDH, Violence raciste ou xénophobe : un niveau sans précédent, document fourni par la RCRG, vendredi 2 juillet 2004 ; Centre d'Etudes des Discriminations, du Racisme et de l'Antisémitisme, *National Report France*, 2004, p.29

³⁷⁰ DUMC, *National Report Netherlands*, 2004, p.54.

³⁷¹ DACORD, *National Report Denmark*, 2004.

Whilst the Madrid bombings and the murder of Theo van Gogh both received international media attention, practically every Member State had its own notable incident or incidents of racist violence and crime. For example, in 2004, **Greece** experienced a wave of violent incidents against Albanians in the aftermath of a football match in which Greece lost against Albania.³⁷² Around 70 Albanians were seriously injured. Other Member States also experienced acts of aggression during football matches. For example, in January 2004, antisemitic slogans (such as ‘All Jews to be gassed’) were heard during a football match between **Belgium** and Israel.³⁷³

In **Finland**, in July 2004, growing tension between Finnish and Somalian youth led to a stabbing.³⁷⁴ And in the same month in **Slovenia**, during a music festival, a singer from Jamaica was shot by a pellet from an air rifle whilst her assailant shouted ‘White Power!’ at her.³⁷⁵

NFP reports for other Member States also provide ‘lists’, which are typically gathered from NGO reports and the media, about incidents against established targets of racist violence and crime – such as the Roma (as reported by the Hungarian and Polish NFPs, among others), and the Jewish community (as reported by the Belgian and Lithuanian NFPs, among others).

6.4. Violence by public officials

Nine NFP reports, or over one third of the twenty-five Member States, include some reference to violent and aggressive acts against ethnic minority and foreign groups by public officials – namely the police or immigration officers. While these acts typically go unpunished as ‘racist violence’, mainly because they are never brought to justice, they are highlighted here because they are particularly serious. Abuse of power by agents of the State against vulnerable ethnic minorities and foreigners, who are sometimes identified as minors in the NFP reports, can be considered as ‘aggravating factors’ that add to the seriousness of violent racist incidents.

The following NFP reports include references to violent and aggressive acts by police or immigration officers. Given that many instances of police abuse go unreported, as do many incidents of non-police initiated racist violence, these reports are likely to under-estimate the actual number of cases in these and other Member States:

Germany: Amnesty International submitted a report in 2004 containing accusations of police mishandling of and unnecessary use of force against

³⁷² Series of articles in Eleftherotypia 06.9.2004; Antigone – Information and Documentation Centre on Racism; Ecology, Peace and Non-Violence, *National Report Greece*, 2004, p.37.

³⁷³ CEOOR, *National Report Belgium*, 2004; p.24.

³⁷⁴ Finnish League for Human Rights, *National Report Finland*, 2004, p.47.

³⁷⁵ Peace Institute – Institute for Contemporary Social and Political Studies, *National Report Slovenia*, 2004, p.38

foreigners.³⁷⁶ Of the twenty cases investigated by Amnesty, twelve involved people with a foreign background. The NGO 'Aktion Courage' also presented its findings in consideration of police assaults against migrants. On the basis of newspaper reports and research, 'Aktion Courage' amassed seventy cases of alleged police mistreatment of migrants in the period 2000-2003.³⁷⁷ In its third report on Germany in 2004, ECRI repeated its demand for the creation of an independent committee to investigate claims of police assaults.³⁷⁸

Greece: In July 2004 the Greek Ombudsman issued a report about its five year investigation into offences against citizens' constitutional rights by the police, including instances of police violence. The Ombudsman notes that only in very few cases were police officers disciplined for their actions. The report stresses that certain population groups, such as foreigners, are unwilling to submit a complaint about the police to the police themselves, or the Ombudsman, because they fear repercussions.³⁷⁹

Spain: Different sources refer to police abuses. In 2003, the NGO 'Movimiento contra la Intolerancia' published a report containing references to police violence against asylum seekers and migrants.³⁸⁰ In its 2003 Annual Report, the Spanish Ombudsman also refers to a number of investigations it has carried out into alleged police abuses. These include investigations into foreigners' deaths and ill treatment of foreigners while in police custody.³⁸¹ In addition, reports from ECRI, CERD and the NGO S.O.S. Racismo refer to an increase in the number of complaints received concerning police malpractice against ethnic minorities and foreigners.³⁸²

³⁷⁶ EFMS, *National Report Germany*, 2004, p.47; reference Amnesty International (2004) *Erneut im Fokus: Vorwürfe über polizeiliche Misshandlungen und den Einsatz unverhältnismässiger Gewalt in Deutschland*, p.3.

³⁷⁷ EFMS, *National Report Germany*, 2004, p.47; reference AktionCourage (2003) *Polizeiübergriffe auf Ausländerinnen und Ausländer in Deutschland 2000-2003*.

³⁷⁸ EFMS, *National Report Germany*, 2004, p.47; reference ECRI (2004) *Dritter Bericht über Deutschland*, p.28.

³⁷⁹ The Greek Ombudsman, Human Rights Department (2004) "Peitharchiki, Dioikitiki Diereunisi kataggelion se varos astynomikon ipallilon" (Disciplinary and Administrative investigation of complaints against police officers).

³⁸⁰ Movimiento contra la Intolerancia (2003), Informe Raxen. Número 20. December 2003. Racismo, Xenofobia e Intolerancia a través de los hechos, Madrid; Movimiento contra la Intolerancia (2004), Informe Raxen. Número 21. March 2004. Racismo, Xenofobia e Intolerancia a través de los hechos, Madrid; reference www.movimientocontralaintolerancia.com/html/raxen/raxen.asp.

³⁸¹ MPDL, *National Report Spain*, 2004, p.70; reference *Informe 2003 del Defensor del Pueblo Español*, at www.defensordelpueblo.es/index.asp?destino=informes1.asp.

³⁸² CERD (2004), Concluding observations of the Committee on the Elimination of Racial Discrimination: Spain. 28/04/2004, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/8443398e4bd3fde9c1256e980049896e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/8443398e4bd3fde9c1256e980049896e?Opendocument) (26.05.2004); ECRI (2003), *Second report on Spain*, available at: http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Spain/Spain_CBC2_pdf.pdf (08.06.2004); MPDL, *National Report Spain*, 2004, p.71.

Italy: Reports by Médecins Sans Frontières³⁸³ and Amnesty International³⁸⁴ outline serious concerns about the conditions in Temporary Detention Centres used for holding asylum applicants, including excessive use of force and maltreatment of asylum seekers by law enforcement agencies. According to Amnesty, reports of physical aggression against people being held in these centres are steadily rising.

Cyprus: An ECRI report from 2001 refers to excessive force by the police against ‘illegal’ migrants.³⁸⁵ According to the NFP’s national report on legislation, there have been complaints by Turks and asylum seekers regarding ill treatment at the hands of the police.³⁸⁶

Hungary: A number of incidents of police mistreatment of and violence against minorities, and in particular Roma, were noted by the Hungarian NFP.³⁸⁷ Some of these examples and ensuing court cases go back several years.

Austria: In 2003, the NGO ZARA was contacted by 650 individuals concerning incidents of racist discrimination, and documented 679 cases of racist discrimination. According to ZARA, nine per cent of documented incidents refer to complaints about police conduct, including allegations of police ill-treatment.³⁸⁸ In August 2004, a police officer was convicted to a conditional six month sentence for assault, dangerous threat, and undue use of official authority against a Mongolian asylum seeker.³⁸⁹

Portugal: In May 2004, the conclusions of the 2003 Amnesty International report on Portugal were made public, and contained references to police violence against ethnic minorities, in particular the Roma.³⁹⁰ The Portuguese NFP also refers to several newspaper reports concerning discriminatory practices by prison guards against inmates from Moldova, Ukraine and Russia.³⁹¹

Finland: Malpractice in one police district led to an investigation by the Ombudsman concerning reports about the police carrying out deportations in an

³⁸³ Medici Senza Frontiere (2004), *Rapporto sui centri di permanenza temporanea e assistenza*, research report, available on the Italian section of Médecins Sans Frontières: http://www.medicisenzafrontiere.it/mstinforma/dossier/missione_italia/CPT_FINALE.pdf (12.10.2004).

³⁸⁴ Amnesty International (2004), *Rapporto Annuale 2004*, Turin: Ega, available on the site of the Italian section of Amnesty International: <http://www.amnesty.it/publicazioni/rapporto2004/> (12.10.2004).

³⁸⁵ ECRI (2001) *Second Report on Cyprus*, European Commission against Racism and Intolerance, Council of Europe, Strasbourg, 03.06.2001.

³⁸⁶ INEK-PEO, *National Report Cyprus*, 2004, p.34.

³⁸⁷ CMRS, *National Report Hungary*, 2004, pp.42-44; reference sources: NGO ‘NEKI’ and Amnesty International.

³⁸⁸ ZARA, *Racism Report 2003*, p. 4; NFP Austria, *National Report Austria*, 2004, p.34.

³⁸⁹ Austria / LG Salzburg GZ 37 HV 96/ 04a, (16.08.2004); NFP Austria, *National Report Austria*, 2004, p.38.

³⁹⁰ Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.43.

³⁹¹ Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.43.

unethical manner, including one case involving the use of non-voluntary medication to carry out a deportation.³⁹²

6.5. Good practices

Finally, this section offers a select reading of ‘good practice’ initiatives, in three areas - police initiatives, victim-centred initiatives, and data collection - that have been identified in the NFP reports, and which variously aim to combat and effectively respond to the problem of racist violence and crime.

6.5.1. Police initiatives

GENERAL

Given the above reports about violence against ethnic minorities and migrants by public officials, there are a number of encouraging references by NFPs to police training initiatives that set out to combat racism in the police; for example: In **Austria**, the Anti-Defamation League organises around forty police training workshops a year entitled ‘A World of Difference’. Since 2004, this training has been incorporated as part of the police force’s compulsory basic training.³⁹³ In **Ireland**, the Garda Racial and Intercultural Unit continues to implement its anti-racism and awareness training programme for the police force’s Ethnic Liaison Officers, who were first appointed in December 2001.³⁹⁴

More generally, a number of police initiatives exist that aim to tackle the problem of racist violence and crime, including the activities of extreme right-wing groups; for example: In **Slovakia**, since January 2004, the police have undergone organisational changes, including the establishment of a special unit to tackle racially motivated crime and extremist activities.³⁹⁵ In the **UK**, the NFP reports that the government has aggressively tackled police and criminal justice reform in an effort to effectively respond to the problem of ‘hate crimes’ and, in particular, racist violence.³⁹⁶

³⁹² European Committee for the Prevention of Torture (2004), *Report to the Finnish Government on the visit to Finland* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 17 September 2003; Finnish League for Human Rights, *National Report Finland*, 2004, p.34.

³⁹³ NFP Austria, *National Report Austria*, 2004, p.39.

³⁹⁴ NFP Ireland, *National Report Ireland*, 2004, p.37.

³⁹⁵ NFP Slovakia, *National Report Slovakia*, 2004, p.30.

³⁹⁶ CRE, *National Report United Kingdom*, 2004, p.60.

ROMA-CENTRED

In the new Member States a number of ‘good practice’ initiatives specifically set out to tackle the problem of police relations with and responses to the Roma community, including their experiences of racist treatment with respect to racist violence and crime. For example:

In the **Czech Republic**, a summer camp was organised for Roma children, in 2004, by the NGO ‘Mutual Coexistence’ and policemen from the Ostrava region. The camp set out to improve communication and understanding between Roma children and the police, and to address the problem of undocumented racist attacks and police prejudices.³⁹⁷ In **Hungary**, police officers in Pest County have taken part in a PHARE and Ministry of Education sponsored training initiative, in which participants learn about the Roma language and culture, as well as conflict resolution.³⁹⁸ The **Polish** NFP also refers to PHARE initiated workshops for police officers and judges, which have been organised as part of the 2002 PHARE project ‘Strengthening Anti-Discrimination Policies’.³⁹⁹ And in **Slovakia**, in 2004, the Ministry of Interior, together with several partners, initiated a programme to select and train police specialists to work more effectively with the Roma community.⁴⁰⁰

6.5.2. Victim-centred initiatives

When highlighting ‘good’ practices, most NFPs outline broad initiatives that address aspects of multiculturalism and community relations – such as the UK’s ‘Community Cohesion Unit’.⁴⁰¹ Very few NFPs refer to initiatives that *specifically* set out to assist victims of racist violence and crime. Two exceptions can be highlighted here:

In **Portugal**, the Association for the Support of Victims and the High Commissioner for Immigration and Ethnic Minorities signed a protocol, in November 2004, establishing the Unit for ‘Support to Immigrant Victims and Victims of Racial and Ethnic Discrimination’.⁴⁰² Part of the new Unit’s remit will be to sensitise the police to the situation of victims, and to provide psychological, social and judicial support to victims. In **Belgium**, mediation initiatives have been established for petty race-related offences that attempt to resolve minor conflicts/offences out of court, either through direct contact between victim and offender or via a mediator. One of the goals of mediation, besides its efforts to address offending, is to reassure the victim about their experience of victimisation,

³⁹⁷ People in Need, *National Report Czech Republic*, 2004, p.27.

³⁹⁸ <http://www.phareoffice.hu> (14.10.2004); CMRS, *National Report Hungary*, 2004, pp.42-44.

³⁹⁹ Helsinki Foundation for Human Rights (HFHR); *National Report Poland*, 2004, p.38.

⁴⁰⁰ NFP Slovakia, *National Report Slovakia*, 2004, p.34.

⁴⁰¹ Safer Southwark Partnership, *Community Wardens*, London: Safer Southwark Partnership, available at

<http://www.saferSouthwark.org.uk/SSP%5Ccontent.nsf/docidview:4A014173EAA7814980256C2F0038AE22>, (14.10.2004); CRE, *National Report United Kingdom*, 2004, p.61.

⁴⁰² Númena - Research Centre on Human and Social Sciences, *National Report Portugal*, 2004, p.64.

and to give the victim a ‘voice’. The Belgian NFP reports the success of the mediation initiatives in Belgium.⁴⁰³ It should be noted that the Belgian Centre for Equal Opportunities and Opposition to Racism (as with other agencies which assist victims of discrimination) achieves a resolution of the vast majority of its cases outside the court.

6.5.3. Data collection

As indicated at the beginning of this chapter, inadequate or non-existent data collection is a perennial problem when attempting to gauge the extent and nature of racist violence and crime. However, some Member States report encouraging developments that should, if put into practice, mean improved data collection for the countries concerned. For example: In the Action Plan of the **Cyprus** Police Force, a set of guidelines is to be adopted that will allow for classification of incidents as ‘racially motivated’. The Cyprus NFP reports that this measure is due to come into force in January 2005. In **Poland**, the government’s ‘National Programme Against Racial Discrimination, Xenophobia and Related Intolerance’ set up a monitoring team in October 2004 to collect data to monitor racism, racial discrimination and xenophobia.⁴⁰⁴

⁴⁰³ CEOOR, *National Report Belgium*, 2004; p.22-39.

⁴⁰⁴ Helsinki Foundation for Human Rights; *National Report Poland*, 2004, p.34

7. Conclusions

This year's EUMC Annual Report has for the first time covered the EU of 25 Member States. Whereas last year the report included a preliminary overview of the 10 Accession Countries only in the field of education, the 10 new Member States are included in all aspects of the report for the year 2004.

Enlargement

One consequence of the process of enlargement is that the focus of this year's EUMC report has enlarged its scope compared to previous years. Within the EU15 countries there are a number of groups which have figured most as targets of racism, xenophobia and discrimination. These are on the one hand the labour migrants of the three decades following World War 2, and their descendants (who generally gain citizenship rights but remain identifiable as minority ethnic groups), and within this broad category, those of Muslim background. On the other hand there are the minority populations including the Jewish population, national minorities, and Roma, Sinti, Gypsies and Travellers. There are also the newest migrant groups, including refugees. Sometimes issues of racism and discrimination cover all these groups, and sometimes there are issues more specific to one group, such as Muslims or Jews.

However, with the growth into 25 Member States the picture has become wider. Whilst Roma population groups live in 24 EU Member States, substantially large Roma communities are found in the new Member States of Central and Eastern Europe (notably the Czech Republic, Hungary and Slovakia). Conversely, the other groups do not share a significant level of dispersal across countries of the EU10. In most of the ten new Member States there has been nothing like the labour migration experienced in many of the EU15 in the post-World War 2 era, and no equivalent corresponding growth of new minority ethnic communities, with all the 'second generation' issues related to this. There is, however, a large Russian minority in the Baltic States due to the flow of migration from the territories of the USSR. The historical Jewish communities which existed in some of the new Member States were largely destroyed during the Holocaust. The current Jewish population is relatively small, and incidents of antisemitism were not reported at all in the NFP reports in half of the new Member States. (Nevertheless, antisemitic attacks on people or property were recorded in the Czech Republic, Hungary, Lithuania and Slovakia.) There is a relatively small Muslim population in the EU10, and the NFPs do not report major incidents of anti-Muslim racism. As reported in last year's Annual Report, issues around the schooling of Muslims have not developed into a public issue in the new Member States, unlike in several of the EU15.

It is for this reason that so many of the NFP reports on the 10 new Member States focus primarily or solely on issues of Roma – not because this year's Annual Report has prioritised the Roma as a theme more than other groups, but because when concerns of racism and discrimination are raised in the new Member States, this is often the only group for which there are available and significant facts to relate.

The incorporation of the 10 new Member States has helped to draw attention to the inclusion of issues of national minorities on the agenda of anti-racism and anti-discrimination. Whereas current EU treaties make no mention of minority protection or positive minority rights, national minorities such as Roma are covered by anti-discrimination measures. The EU's anti-discrimination Directives will therefore be of potentially great importance for the Roma in order to help to break the vicious circle of deprivation, prejudice and discrimination that they experience.

Negative and positive developments

The year 2004 was marked by incidents which had repercussions wider than their country of occurrence. In March 2004 the Madrid train bombings, carried out probably by a group of radical Moroccan Islamists, killed nearly 200 people, and reportedly were the cause of a rise in both anti-Muslim and antisemitic attacks in France in the following period. The murder of Dutch film maker Theo van Gogh by a Dutch-Moroccan radical Islamist was followed by a wave of violent incidents, mainly against Muslims and mosques, in the Netherlands, as well as death threats to politicians in Belgium, and was also reported to have had a strong impact on public and political debate on immigration and religion in Denmark and Germany.

However, the year was also marked by positive developments in anti-discrimination measures and activities. The majority of the EU25 transposed the anti-discrimination Directives into their national contexts, thus laying the basis for a strengthened awareness and practice in this field. The minority of four Member States – Germany, Luxembourg, Austria and Finland – were referred in July 2004 to the European Court of Justice (ECJ) for their failure to satisfy the requirements of the Racial Equality Directive, and in December 2004 the same four were referred to the ECJ for their failures regarding the Employment Equality Directive.

The fact that most EU Member States have now transposed the Directives means that anti-discrimination is now on the national agendas of Member States more than ever before. Other legislation not related to the Directives also offered positive developments in 2004. Some Member States introduced legislation targeted at racist offenders, such as that covering illegal Internet use by extreme right-wing groups, and some increased the sanctions against racist crimes. Similarly during 2004 non-discrimination and equality issues became even more prominent on the agenda at EU level. The new President of the European Commission stated in 2004 that he would adopt a package to consolidate respect for human rights and non-discrimination in Europe, and the new Commission committed itself to a greater integration of anti-discrimination policy in other policy areas and implements. In

May 2004 the Commission launched a Europe-wide consultation exercise which indicated a high level of support for further action to combat discrimination following enlargement. There were moves started in 2004 to examine whether the scope of the anti-discrimination Employment Directive should be extended to areas outside employment, such as regarding discrimination in access to goods and public services.

However, there are certain mixed messages coming out of legislative activities at national level. Alongside the legislative improvements in the area of anti-discrimination, which in practice strengthen the rights of migrants and minorities, there are other developments which appear to work in the opposite direction and restrict their rights and opportunities. For example, in some countries there has been new legislation which restricts marriage rights regarding foreigners. There has also been legislation and case law banning clothing signifying religious faith, such as headscarves, from schools or at the workplace, to the effect that individuals insisting on this clothing are excluded. And there have been moves in some countries to redefine national minorities, advantaging some minority groups over others, and in some cases undermining the rights of Roma.

In some Member States and some sectors there is a clear economic need for an increased workforce, which immigrants could at least partly satisfy. Yet some Member States are curtailing access to the labour market of refugees and asylum seekers, or giving out messages through new legislation that immigrants are not welcome, for political rather than economic reasons. A further 'mixed message' can be generated by immigration policies alongside policies against discrimination (or for diversity). The problem is not the existence of a restrictive immigration policy in itself, but the fact that in some cases the particular components of immigration policies give out messages to the public about the undesirability of immigrants and could therefore stimulate anti-immigrant sentiments. The 'mixed message' is made worse by the political discourse around such policies – an anti-immigrant discourse which undermines the quality of life of those of immigrant descent who are citizens of, or permanently resident in, a Member State.

As well as the active introduction of new legislation, there is also the problem of the passive non-removal of certain existing legal restrictions. Whilst the anti-discrimination Directives confer the right to labour without discrimination, including for third country nationals, there are other legal restrictions in some countries which restrict the access of non-nationals to certain (often public sector) occupations, or the use of permits which restrict their ability to change jobs. Such legal restrictions give large numbers of workers a status which renders them vulnerable to exploitation and discrimination. The anti-discrimination Directives do not encompass differential treatment based on nationality, and therefore laws and administrative restrictions governing the access of third country nationals to employment are in principle legitimate, unless it can be proven that discrimination took place on the grounds of ethnic/racial origin. Nevertheless they are instruments which do contribute to inequalities along the lines of social group membership, and are considered by some to be a form of 'legal discrimination'. Such 'legal discrimination' also occurs outside the employment sector, as with the area of

housing, where in some countries non-nationals are ineligible for social housing and find themselves more vulnerable to exploitation in the private rental sector. It is interesting that some of the ‘good practice’ examples identified in the housing section of this report concern municipalities which over-ride this with schemes for the specific allocation of apartments to foreign nationals. In the employment sector the passive tolerance by governments of the exploitation of undocumented workers in low paid and dangerous conditions creates exclusion which has contributed to the fostering of prejudice and racism in the majority population. However, in 2004 a number of countries offered extraordinary regularisations of undocumented migrants.

Integration and anti-discrimination

Apart from anti-discrimination activities, the other relevant area of developments at EU level is that of integration. Following the adoption of the Hague Programme the Council adopted on 19 November 2004 a set of common basic principles for immigrant integration. One of these was to develop indicators and evaluation mechanisms on integration of immigrants as these were seen to be necessary to evaluate progress, adjust policies and make more effective the exchange of information.

Integration and anti-discrimination are important and related areas of concern. The main focus of integration policies is on the more recently arrived immigrants and refugees. Integration policies are less relevant for longer established migrant-descended and minority ethnic populations, for whom many of the components of integration policies, such as language training, are less relevant. The barriers they face are more likely to be the focus of anti-discrimination policies. Anti-discrimination issues, rather than integration issues, are also more relevant to long-term national minorities such as Roma. Of course, in practice the boundaries between these categories of policies are not distinct – for example, anti-discrimination components should also be an important part of integration policies otherwise the latter will be less effective.

Data collection

Also relevant to the twin emphases of integration and anti-discrimination is the issue of inadequate data collection. One theme running through this EUMC report is the problem of the absence of adequate data on which to evaluate problems and base policies. But inadequate data is less of a problem with regard to the field of integration than it is with regard to the area of anti-discrimination. Governments are less sensitive about the collection of data along the dimension most relevant to integration, which is nationality. However, the main variable for anti-discrimination work is not nationality but ethnic/national origin, as citizens of a country are vulnerable to racial discrimination as much as non-citizens are.

However, in most EU Member States there is great reluctance to collect statistics along these lines.

The problem is that in order to have reliable data on discrimination it is necessary to have information on the main relevant variables, namely on 'race', ethnic origin, national origin or religion. Bodies working against racism and discrimination have been arguing for many years that data collection according to these criteria is essential for the development of anti-discrimination policies. The Council of Europe's ECRI⁴⁰⁵ has a General Policy Recommendation which states that governments should collect such data, so as to assist in assessing the circumstances and experiences of groups that are vulnerable to racism, and in developing policies to combat racism and discrimination. In its individual country reports⁴⁰⁶ ECRI recommends to governments to collect relevant information broken down according to categories such as nationality, national or ethnic origin, language and religion. Such statistics are important for the identification of indicators of discrimination, for the judgement as to what are the most effective anti-discrimination policies, and for the measurement of the impact of anti-discrimination legislation.

The Council anti-discrimination Directives make this issue more relevant today than a few years ago. For example, the Directives cover the issue of indirect discrimination, and the impact of indirect discrimination will not be visible unless data exists which allows the differential impact of seemingly neutral provisions to be seen. Furthermore, the changes in the balance of the burden of proof mean that there is likely to be more pressure on employers to record this type of data, perhaps for 'self defence' purposes. In addition, the Directives allow 'positive action' as a type of anti-discrimination activity, and positive action generally requires ethnic monitoring.

As things stand, discrimination in the fields of employment, education and housing is difficult to quantify within a country, and compare between countries, because of the absence of statistical evidence on national and ethnic origin. As this Annual Report shows, within Member States there is a range of direct evidence of discrimination in the form of reported incidents, formal complaints and court cases. NGOs play an important role in data collection in this area. All Member States have surveys and research studies on discrimination, which variously address the subject of discrimination in these areas. Nevertheless, without official and organisational statistics on ethnic and national origin, a true insight into discrimination and the success of policies against it will be difficult to ascertain. This applies equally to the Roma issue – it will be difficult to monitor adequately the full extent of discrimination and the progress and benefits of anti-discrimination measures without the collection of statistics which record Roma origin.

⁴⁰⁵ European Commission against Racism and Intolerance.

⁴⁰⁶ http://www.eoe.int/TE/human_rights/ecri/1-ECRI/2-Country-by-country_approach.

Similarly the true extent and nature of the problem of racist violence and crime remains difficult to gauge given the continued absence or ineffectiveness of both official and unofficial data collection in many Member States.⁴⁰⁷ The chapter on racist violence shows that where data collection exists it is difficult to compare findings between Member States, as the parameters of what is collected vary widely. One step in the direction of improving this would be the adoption of the Commission's Proposal for a Council Framework Decision on Combating Racism and Xenophobia,⁴⁰⁸ which sets out to establish a framework for punishing racist and xenophobic violence as a criminal offence. The Framework Decision would bring Member States closer together with respect to their laws on racist and xenophobic offences, and, if adopted, would contribute to the enhancement of data collection on racist violence and crime across the EU.

⁴⁰⁷ <http://eumc.eu.int> – Comparative Report on 'Racist Violence in the EU15', Chapter 2.

⁴⁰⁸ Proposal for a Council Framework Decision on Combating Racism and Xenophobia – COM(2001) 664 final.

8. Opinions

General Comment

The EUMC continues to identify shortcomings in the Member States in data collection, incident recording and monitoring of progress to overcome obstacles to racial equality in the fields of employment, housing, education and tackling racist violence. The EUMC believes that the interdependence between the fields it has analysed draws attention to the need for the development of policy across government departments and a more integrated approach from the design of policy to its implementation. Integration is viewed as one of the main challenges facing Member States in the European Union, policy developed should therefore take into account the interdependency between employment, education and housing to ensure that integration goes hand in hand with equality and social inclusion. The EUMC is of the opinion that there is a need for greater emphasis on the impact on the rights of the individuals belonging to ethnic minority groups as a consequence of national, regional and local policy in the fields analysed in this report. Regular review and assessment of the impact of national policies therefore needs to be built in and actively pursued with the support of civil society organisations and social partners. In assessing impact there is a need for greater involvement of those who are identified as the victims.

Although too early to assess fully the impact of the Racial Equality and Employment Equality Directives, the EUMC's opinion is that implementing measures need to be supported by training and by greater awareness within public institutions and key sectors of the economy of the public policy and economic benefits of combating racism. The role of Equality bodies and civil society organisations working in the equality field in supporting implementation measures is therefore of paramount importance. Transposition of the directives should be the first step to developing a more comprehensive approach to tackling racial discrimination and establishing visible indicators of progress.

The EUMC has highlighted the practice of those Member States who it is of the opinion are moving forward to address the core issues underlining racial equality – in many instances these inform the conclusions and opinions of the EUMC. In addition, the EUMC has drawn on broader developments within Europe which result primarily from its cooperation with the Council of Europe. The EUMC's opinion is that by drawing on these developments the framework for action to combat racism will be practical, consistent and coherent.

Legislation and institutional initiatives against racism and xenophobia

The EUMC notes that the European Commission has instigated compliance action against several Member States for failure to transpose the equality directives and urges those Member States who have not yet fully done so to transpose Council Directive 2000/43/EC, and, specifically with regard to religion, Council Directive 2000/78/EC and to consider going beyond the minimum legal requirements. The EUMC calls on Member States:

- to ensure that the equality body required by Council Directive 2000/43/EC is fully independent (guaranteed by statute), its composition fully reflects the society in which it operates and it is adequately resourced to carry out its functions;
- to ensure that the competencies of such a body include the power to carry out investigations and to promote policies and practices to foster equal treatment;
- to ensure that both potential victims and perpetrators of discrimination are fully aware of their rights and obligations under the legislation, and to ensure the full and meaningful implementation of Articles 11 and 12 of Council Directive 2000/43/EC on the involvement of stakeholders, NGOs, social partners and other civil society representatives in a structured, ongoing and inclusive dialogue; and
- to take action to include a positive duty to promote equality on public sector institutions providing goods and services to the public.

The EUMC is of the opinion that more action is required at the policy development and monitoring stage to ensure that economic and social aspects of equality and non-discrimination policies are better integrated. Member States should set up within government departments inter-departmental working groups who are tasked to integrate the economic and social aspects of policy to combat discrimination and promote equality. This inter-departmental working group should make public a regular progress report which should include inter alia the review and assessment of national and local policy to meet objectives of combating discrimination and promoting equality.

Tackling racial discrimination in the employment sector

The EUMC welcomes the progress made in incorporating the situation of migrants/minorities in the European Employment Strategy. Within National Action Plans on Employment, Member States should

- set clear, quantitative targets and indicators within the employment guidelines that enable them to measure progress in improving the situation of migrants/minorities;
- include specific operational measures against discrimination and exclusion;
- report regularly on the impact of their measures to promote equality and combat racial discrimination.

Tackling racial discrimination in the housing sector⁴⁰⁹

The EUMC has identified a variety of practices which undermine the right to housing and impact on the access to housing of members of ethnic minority groups. The EUMC is of the opinion that Member States, through their relevant authorities, should undertake systematic and regular review of their legislation, policies and practices and remove all provisions or administrative practices that result in direct or indirect discrimination against members of ethnic minority groups, regardless of whether this results from action or inaction of state or non-state actors.

In addition, Member States should establish adequate and independent mechanisms or task existing equality and anti-discrimination bodies to report on compliance with anti-discrimination measures in the housing sector, these mechanisms or bodies should report annually to national parliaments on the status of implementation and make their reports public. In carrying out their duties these bodies should consult ethnic minority communities and relevant organisations working in this field.

Tackling racial discrimination in the education sector

The EUMC is of the opinion that policy initiatives and measures need to be implemented to ensure that access to education is equal for all and that all members of society benefit fully from education and through education have the opportunity to realise their potential.

The EUMC is therefore of the opinion that Member States need to ensure that policies and practices do not inadvertently result in segregation or the over-representation of ethnic minorities in schools with lower academic demands or special education. Member States should examine the procedures which lead to the

⁴⁰⁹ The term housing includes different modes of accommodation.

assignment of a disproportionate amount of ethnic minority pupils such as the Roma to special education programmes or needs schools.

Member States should provide a regular audit and monitoring of the situation of ethnic minority pupils in the education sector with a breakdown on the educational attainment of ethnic minority groups and the proportion moving on to further education.

Tackling racist violence and crime

Racist violence remains a reality for members of ethnic minorities and certain religious communities. The EUMC is of the opinion that legislative measures combined with improved data collection and criminal justice initiatives can contribute to monitoring, assessing and providing protection to victims. It therefore calls on Member States

- to adopt a workable and sufficiently broad legal definition of crime as ‘racist’, and to recognise ‘racist motive’ as an aggravating factor that increases sentencing;
- to collect and make publicly available detailed statistics on racist crime, at every stage of the criminal justice system, which can be anonymously disaggregated to reveal information about victims’ ethnicity, ‘race’ and religion;
- to develop crime/victim surveys that allow quantitative and comparable data collection on victims of racist crime, and which provide an alternative to official data;
- to promote comprehensive and regular police training on effective responses to racist crime, based on ‘good practice’, which acknowledges the needs of both the criminal justice system and victims of racist crime.

European Monitoring Centre on Racism and Xenophobia

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developments and good practice**

Annual Report 2005 – Part 2

Wien, Printer: Manz Crossmedia GmbH.

2005 – 104 pp, – 21 x 29.7 cm

ISBN 92-95008-89-8

A great deal of information on the European Monitoring Centre is available on the Internet. It can be accessed through the EUMC website (<http://eumc.eu.int>)

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EUMC Mission Statement

The European Monitoring Centre on Racism and Xenophobia (EUMC) is a thinking, acting and challenging network organisation, working in all sectors of society for equality and diversity, and against racism and xenophobia in the European Union - as a network of knowledge, a bridge-builder and a service organisation.

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ISBN 92-95008-89-8



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